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Secretary of State

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PREFACE

The Tennessee Administrative Register (T.A.R.) is an official publication of the Tennessee Department of State. The T.A.R. is compiled and published monthly by the Department of State pursuant to *Tennessee Code Annotated, Title 4, Chapter 5*. The T.A.R. contains in their entirety or in summary form the following: (1) various announcements (e.g. the maximum effective rate of interest on home loans as set by the Department of Financial Institutions, formula rate of interest and notices of review cycles); (2) emergency rules; (3) proposed rules; (4) public necessity rules; (5) notices of rulemaking hearings and (6) proclamations of the Wildlife Resources Commission.

Emergency Rules are rules promulgated due to an immediate danger to the public health, safety or welfare. These rules are effective immediately on the date of filing and remain in effect thereafter for up to 165 days. Unless the rule is promulgated in some permanent form, it will expire after the 165-day period. The text or a summary of the emergency rule will be published in the next issue of the T.A.R. after the rule is filed. Thereafter, a list of emergency rules currently in effect will be published.

Proposed Rules are those rules the agency is promulgating in permanent form in the absence of a rulemaking hearing. Unless a rulemaking hearing is requested within 30 days of the date the proposed rule is published in the T.A.R., the rule will become effective 105 days after said publication date. All rules filed in one month will be published in the T.A.R. of the following month.

Public Necessity Rules are promulgated to delay the effective date of another rule that is not yet effective, to satisfy constitutional requirements or court orders, or to avoid loss of federal programs or funds. Upon filing, these rules are effective for a period of 165 days. The text or summary of the public necessity rule will be published in the next issue of the T.A.R. Thereafter, a list of public necessity rules currently in effect will be published.

Once a rule becomes effective, it is published in its entirety in the *official compilation-Rules and Regulations of the State of Tennessee*. Replacement pages for the compilation are published on a monthly basis as new rules or changes in existing rules become effective.

Wildlife Proclamations contain seasons, creel, size and bag limits, and areas open to hunting and/or fishing. They also establish wildlife and/or public hunting areas and declare the manner and means of taking. Since Wildlife Proclamations are published in their entirety in the T.A.R., they are not published in the *official compilation-Rules and Regulations of the State of Tennessee*.

Back Issues - Some back issues of the *Tennessee Administrative Register* are available. Please send \$ 1.50 per issue along with the volume, number and date you wish to order to the address in the back of this issue.

Copies of Rules from Back Issues of the *Tennessee Administrative Register* may be ordered from the Division of Publications for 25 cents per page with \$ 1.00 minimum. Back issues presently available start with the August, 1975 edition. The mailing address of the Division of Publications is shown on the order form in the back of each issue.

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ANNOUNCEMENTS

DEPARTMENT OF FINANCIAL INSTITUTIONS – 0180

ANNOUNCEMENT OF FORMULA RATE OF INTEREST

Pursuant to the provisions of Chapter 464, Public Acts of 1983, the Commissioner of Financial Institutions hereby announces that the formula rate of interest is 12.25%.

This announcement is placed in the Tennessee Administrative Register for the purpose of information only and does not constitute a rule within the meaning of the Uniform Administrative Procedures Act.

Greg Gonzales

DEPARTMENT OF FINANCIAL INSTITUTIONS – 0180

ANNOUNCEMENT OF MAXIMUM EFFECTIVE RATE OF INTEREST

The Federal National Mortgage Association has discontinued its free market auction system for commitments to purchase conventional home mortgages. Therefore, the Commissioner of Financial Institutions hereby announces that the maximum effective rate of interest per annum for home loans as set by the General Assembly in 1987, Public Chapter 291, for the month of November 2006 is 8.90 percent per annum.

The rate as set by the said law is an amount equal to four percentage points above the index of market yields of long-term government bonds adjusted to a thirty (30) year maturity by the U. S. Department of the Treasury. For the most recent weekly average statistical data available preceding the date of this announcement, the calculated rate is 4.90 percent.

Persons affected by the maximum effective rate of interest for home loans as set forth in this notice should consult legal counsel as to the effect of the Depository Institutions Deregulation and Monetary Control Act of 1980 (P.L. 96-221 as amended by P.L. 96-399) and regulations pursuant to that Act promulgated by the Federal Home Loan Bank Board. State usury laws as they relate to certain loans made after March 31, 1980, may be preempted by this Act.

Greg Gonzales

For more information on interest rates, go to <http://www.tennessee.gov/tdfi/rates/index.html>

ANNOUNCEMENTS

GOVERNMENT OPERATIONS COMMITTEES

ANNOUNCEMENT OF PUBLIC HEARINGS

For the date, time, and, location of this hearing of the Joint Operations committees, call 615-741-3642. The following rules were filed in the Secretary of State's office during the previous month. All persons who wish to testify at the hearings or who wish to submit written statements on information for inclusion in the staff report on the rules should promptly notify Fred Standbrook, Suite G-3, War Memorial Building, Nashville, TN 37243-0059, (615) 741-3072.

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	ID#	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
10-01-06	Oct 2, 2006	1110 Peace Officer Standards And Training Commission	Proposed Rule	Amendments	2230	Chapter 1110-1 Definitions 1110-1-.01 Definitions	Brian Grisham 3025 Lebanon Road Nashville TN 37214-2217 615-741-4448	Feb 28, 2006
					2231	Chapter 1110-2 Certification 1110-2-.01 Persons Required To Be Certified 1110-2-.03 Law Enforcement Officer Certification Requirements 1110-2-.04 Denial Suspension, and Revocation of Certification		
					2232	Chapter 1110-3 Curricula and Course of Instruction 1110-3-.04 Certification for Specialized Police Instructors		
					2233	Chapter 1110-4 In-Service Training Requirements 1110-4-.03 Appointment of Training Officer 1110-4-.09 Approval of Specialized Schools 1110-4-.11 Approval of Law Enforcement Courses Conducted By Colleges and Universities for In-Service Credit 1110-4-.12 Successful Completion of In-Service Training for Salary Supplement Payment		
					2234	Chapter 1110-5 Forms and Documents 1110-5-.01 Forms Required for Peace Officer Certification		
					2235	Chapter 1110-7 Basic Training Academy Minimum Standards 1110-7-.01 Minimum Curricula Requirements 1110-7-.03 Buildings and Facilities		

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	ID#	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
10-01, cont.					2236	Chapter 1110-8 Part-Time/Temporary/Auxiliary Law Enforcement Officers 1110-8-.02 Preemployment Requirements 1110-8-.03 Training Requirements		
					2237	Chapter 1110-9 Criteria for Waivers 1110-9-.01 Submission of Waiver Request		
10-06	Oct 10, 2006	0800 Labor Workers Compensation	Emergency Rule	Amendment Renewed from April 7, 2006	2226	Chapter 0800-02-18 Medical Fee Schedule 0800-02-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges)	E. Blaine Sprouse Workers' Compensation Labor & Workforce Development Andrew Johnson Twr 2nd Fl 710 J Robertson Pkwy Nashville TN 37243-0661 (615) 253-0064	October 10, 2006 through March 24, 2006
10-07	Oct 10, 2006	0800 Labor Workers Compensation	Emergency Rule	Amendment Renewed from April 7, 2006	2225	Chapter 0800-2-18 Medical Fee Schedule 0800-02-18-.02 General Information and Instructions for Use 0800-02-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges) 0800-02-18-.09 Physical and Occupational Therapy Guidelines	E. Blaine Sprouse Workers' Compensation Labor & Workforce Development Andrew Johnson Twr 2nd Fl 710 J Robertson Pkwy Nashville TN 37243-0661 (615) 253-0064	October 10, 2006 through March 24, 2006
10-08	Oct 13, 2006	0780 Commerce and Insurance Insurance Division	Rulemaking Hearing Rules	Amendments	2238	Chapter 0780-1-58 Medicare Supplement Insurance Minimum Standards 0780-1-58-.01 Purpose 0780-1-58-.02 Authority 0780-1-58-.03 Applicability and Scope 0780-1-58-.04 Definitions 0780-1-58-.05 Policy Definitions and Terms 0780-1-58-.06 Policy Provisions 0780-1-58-.07 Minimum Benefit Standards for Policies or Certificates Issued for Delivery Prior to July 1, 1992 0780-1-58-.08 Benefit Standards for Policies or Certificates Issued for Delivery After July 1, 1992 0780-1-58-.09 Standard Medicare Supplement Benefit Plans	Tracey Gentry Harney Staff Attorney Department of Commerce and Insurance Davy Crockett Tower, Twelfth Floor 500 James Robertson Parkway Nashville, Tennessee 37243 (615) 741-2199	Dec 27, 2006

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	ID#	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
10-08, cont.						0780-1-58-.10 Medicare Select Policies and Certificates 0780-1-58-.11 Open Enrollment 0780-1-58-.12 Guaranteed Issue for Eligible Persons 0780-1-58-.13 Standards for Claims Payment 0780-1-58-.14 Loss Ratio Standards and Refund or Credit of Premium 0780-1-58-.15 Filing and Approval of Policies and Certificates and Premium Rates 0780-1-58-.16 Permitted Compensation Arrangements 0780-1-58-.17 Required Disclosure Provisions 0780-1-58-.18 Requirements for Application Forms and Replacement Coverage 0780-1-58-.19 Filing Requirements for Advertising 0780-1-58-.20 Standards for Marketing 0780-1-58-.21 Appropriateness of Recommended Purchase and Excessive Insurance 0780-1-58-.22 Reporting of Multiple Policies 0780-1-58-.23 Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods and Probationary Periods in Replacement Policies or Certificates 0780-1-58-.24 Severability 0780-1-58-.25 Effective Date Appendix A Medicare Supplement Refund Calculation Form Appendix B Form for Reporting Medicare Supplement Policies Appendix C Disclosure Statements Appendix D Statements and Questions to be Included in Application Forms Appendix E Notice to Applicant Regarding Replacement of Medicare Supplement Insurance or Medicare Advantage		

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	ID#	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
10-12-06	Oct 17, 2006	0400 Environment and Conservation Bureau of Environment Division of Air Pollution Control	Rulemaking Hearing Rules	Amendments	2240	Chapter 1200-3-26 Administrative Fees Schedule 1200-3-26-.02 Construction And Annual Emission Fees	Mr. Malcolm H. Butler Division of Air Pollution Control 9th Floor L & C Annex 401 Church Street Nashville, TN 37243-1531 (615) 532-0600	Dec 31, 2006
10-13-06	Oct 17, 2006	0400 Environment and Conservation Bureau of Environment Division of Air Pollution Control	Rulemaking Hearing Rules	Amendments	2239	Chapter 1200-3-31 Case by Case Determinations of Hazardous Air Pollutant Control Requirements 1200-3-31-.02 Definitions	Mr. Malcolm H. Butler Division of Air Pollution Control 9th Floor L & C Annex 401 Church Street Nashville, TN 37243-1531 (615) 532-0600	Dec 31, 2006
10-14-06	Oct 18, 2006	0260 Chiropractic Examiners	Rulemaking Hearing Rules	Amendments	2241	Chapter 0260-2 General Rules Governing Chiropractic Examiners 0260-2-.12 Continuing Education	Robert J. Kraemer Health OGC 26th Fl William R. Snodgrass Tennessee Tower, 312 Eighth Avenue North, Nashville, TN 37247-0120, (615) 741-1611	Jan 2, 2007

ANNOUNCEMENTS

TENNESSEE HEALTH SERVICES AND DEVELOPMENT AGENCY - 0720

NOTICE OF BEGINNING OF REVIEW CYCLE

Visit the Tennessee Health Services and Development Agency web site at: http://www.tennessee.gov/hsda/health_plan_agency_meet.html for the latest Notice of Beginning of Review Cycle.

EMERGENCY RULES

EMERGENCY RULES NOW IN EFFECT

For text of emergency rules filed prior to September, see T.A.R. cited,

<http://www.state.tn.us/sos/pub/tar/index.htm>

or

visit the Department of State's website,

http://www.state.tn.us/sos/rules/emergency/emer_index.htm

- 0080 - Department of Agriculture - Division of Regulatory Services - Emergency rules dealing with the protection of the small ruminant industry from the threat of Scrapie - chapter 0080-2-1 Health Requirements for Admission and Transportation of Livestock and Poultry, September 2006 T.A.R., Volume 32, number 10. - Filed August 30, 2006; effective through February 11, 2007. (08-43-06)

EMERGENCY RULES

THE TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0800 DIVISION OF WORKERS' COMPENSATION

CHAPTER 0800-2-18 MEDICAL FEE SCHEDULE

Statement of Necessity for Readopting Emergency Rules

Pursuant to Tenn. Code Ann. §§ 4-5-208(a) (2005 Repl.), and 50-6-204(i)(5), the Commissioner submits these Medical Fee Schedule Rule Amendments ("Rule Amendments") for readoption as emergency rule amendments as part of the comprehensive medical fee schedule and related system applicable to all medical treatment under the Workers' Compensation Law as administered by the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development. Readoption of these as emergency rule amendments is necessary for the reasons set forth below and because Tenn. Code Ann. § 50-6-204(i) requires the comprehensive medical fee schedule and related system be in place and effective on and after July 1, 2005. Tenn. Code Ann. § 50-6-204(i)(5).

These Rule Amendments were initially adopted as emergency rules and filed with the secretary of state's office on April 27, 2006, when proposed rules were also filed. Those emergency rule amendments will expire on October 9, 2006. Unless these Rule Amendments are readopted as emergency rule amendments now, there will be a period of time when no effective Rules will be in place. In response to a petition on the proposed rule amendments, a rulemaking public hearing will be held on these Rule Amendments on September 19, 2006. The Department is expecting a large attendance of interested parties as it has received many inquiries concerning these Rule Amendments and about this public rulemaking hearing. After the hearing is held, the Department will have to analyze all of the numerous oral and written comments received during the rulemaking public hearing and must respond to each in writing as required pursuant to Tenn. Code Ann. § 4-5-222 (2005 Repl.) Given that the rulemaking hearing rules may not become effective until at least 75 days after filing with the secretary of state's office, it would be impossible to avoid a lapse in these Rule Amendments without the readoption of them as emergency rule amendments. The Department could not have reasonably foreseen during the initial one hundred sixty-five day period that the original need for the emergency rule amendments would continue or recur during the next nine (9) months following the initial adoption of these emergency Rule Amendments, as they were adopted in response from medical providers in order to alleviate substantial loss of these medical providers from the workers' compensation system.

Medical providers, employees, employers and insurers are statutorily mandated to comply with the medical fee schedule rules, of which these Rule Amendments are an integral part, on and after July 1, 2005, in providing all workers' compensation medical benefits. These Rule Amendments are necessary to comply with the mandate enacted by the General Assembly in Public Chapter 962 (Tenn. Code Ann. § 50-6-204, (2005 Supp.)) to provide the required medical fee schedule with guidelines and procedures to medical providers, employees, employers and insurers. Thus, these emergency rule amendments are being readopted to protect the public welfare. Due to the length of time necessary to complete the rulemaking process under the Uniform Administrative Procedures Act, these emergency Rule Amendments should be readopted immediately to provide applicable medical fees, guidelines and procedures so as not to jeopardize injured employees' ability to receive prompt and adequate medical care. Further, Tenn. Code Ann. § 50-6-204(i)(5) specifically authorizes adoption of these Rule Amendments as emergency rule amendments.

James Neeley, Commissioner
Tennessee Department of Labor &
Workforce Development

For copies of these emergency rule amendments, contact: Rhonda Hutt, Administrative Secretary, Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation, Andrew Johnson Tower, Second Floor, 710 James Robertson Parkway, Nashville, TN 37243-0661, (615) 532-1471.

EMERGENCY RULES

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0800-2-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges)

The text of the emergency amendments is as follows:

AMENDMENTS

Subparagraph (b) of paragraph (1) of rule 0800-2-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges) is amended by deleting the following current language in the last sentence, "(subject to wage-price index adjustment)," so that as amended the subparagraph shall read:

- (b) The CMS has implemented the Outpatient Prospective Payment System ("OPPS") under Medicare for reimbursement for hospital outpatient services at most hospitals. All services paid under the new OPPS are classified into groups called Ambulatory Payment Classifications ("APC"). Services in each APC are similar clinically and in terms of the resources they require. The CMS has established a payment rate for each APC. Current APC Medicare allowable payment amounts and guidelines are available online at: <http://www.cms.hhs.gov/HospitalOutpatientPPS>. The payment rate for each APC group is the basis for determining the maximum total payment to which an ASC or hospital will be entitled.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Subparagraph (e) of paragraph (1) of rule 0800-2-18-.07 **Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges)** is amended by deleting the current language in its entirety and replacing it so that as amended the subparagraph shall read:

- (e) Reimbursement for all outpatient services is based on the Medicare Ambulatory Payment Classification ("APC") national unadjusted base rates, which can be obtained from the Centers for Medicare and Medicaid Services. There are no adjustments for wage-price indices and these are not hospital-specific APC rate calculations. Reimbursements for Critical Access Hospitals ("CAH") are not based on CAH methodology but on the national unadjusted APC base rates as described in the preceding sentence.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

The emergency rule amendments set out herein were properly filed in the Department of State on the 10th day of October, 2006, and will be effective from the day of filing for a period of 165 days. These emergency rule amendments will remain in effect through the 24th day of March, 2007. (10-06-06)

EMERGENCY RULES

THE TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0080 DIVISION OF WORKERS' COMPENSATION

STATEMENT OF NECESSITY REQUIRING EMERGENCY RULES

Pursuant to Tenn. Code Ann. §§ 4-5-208(a) (2005 Repl.), and 50-6-204(i) (5), the Commissioner submits these Medical Fee Schedule Rule Amendments ("Rule Amendments") for readoption as emergency rule amendments as part of the comprehensive medical fee schedule and related system applicable to all medical treatment under the Workers' Compensation Law as administered by the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development. Readoption of these as emergency rule amendments is necessary for the reasons set forth below and because Tenn. Code Ann. § 50-6-204(i) requires the comprehensive medical fee schedule and related system be in place and effective on and after July 1, 2005. Tenn. Code Ann. § 50-6-204(i)(5).

These Rule Amendments were initially adopted as emergency rules and filed with the secretary of state's office on April 27, 2006, when proposed rules were also filed. Those emergency rule amendments will expire on October 9, 2006. Unless these Rule Amendments are readopted as emergency rule amendments now, there will be a period of time when no effective Rules will be in place. In response to a petition on the proposed rule amendments, a rulemaking public hearing will be held on these Rule Amendments on September 19, 2006. The Department is expecting a large attendance of interested parties as it has received many inquiries concerning these Rule Amendments and about this public rulemaking hearing. After the hearing is held, the Department will have to analyze all of the numerous oral and written comments received during the rulemaking public hearing and must respond to each in writing as required pursuant to Tenn. Code Ann. § 4-5-222 (2005 Repl.) Given that the rulemaking hearing rules may not become effective until at least 75 days after filing with the secretary of state's office, it would be impossible to avoid a lapse in these Rule Amendments without the readoption of them as emergency rule amendments. The Department could not have reasonably foreseen during the initial one hundred sixty-five day period that the original need for the emergency rule amendments would continue or recur during the next nine (9) months following the initial adoption of these emergency rule amendments, as they were adopted in response from providers in order to alleviate substantial loss of these providers from the workers' compensation system.

Medical providers, employees, employers and insurers are statutorily mandated to comply with the medical fee schedule rules, of which these Rule Amendments are an integral part, on and after July 1, 2005, in providing all workers' compensation medical benefits. These Rule Amendments are necessary to comply with the mandate enacted by the General Assembly in Public Chapter 962 (Tenn. Code Ann. § 50-6-204, (2005 Supp.)) to provide the required medical fee schedule with guidelines and procedures to medical providers, employees, employers and insurers. Thus, these emergency rule amendments are being readopted to protect the public welfare. Due to the length of time necessary to complete the rulemaking process under the Uniform Administrative Procedures Act, these Rule Amendments should be readopted immediately to provide applicable medical fees, guidelines and procedures so as not to jeopardize injured employees' ability to receive prompt and adequate medical care. Further, Tenn. Code Ann. § 50-6-204(i)(5) specifically authorizes adoption of these Rule Amendments as emergency rules.

James Neeley, Commissioner
Tennessee Department of Labor &
Workforce Development

For copies of these emergency rule amendments, contact: Rhonda Hutt, Administrative Secretary, Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation, Andrew Johnson Tower, Second Floor, 710 James Robertson Parkway, Nashville, TN 37243-0661, (615) 532-1471.

EMERGENCY RULES

EMERGENCY RULES OF THE TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0080 DIVISION OF WORKERS' COMPENSATION

CHAPTER 0800-2-18 MEDICAL FEE SCHEDULE

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- 0800-2-18-.02 General Information and Instructions for Use
- 0800-2-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges)
- 0800-2-18-.09 Physical and Occupational Therapy Guidelines

The text of the emergency amendments is as follows:

AMENDMENTS

0800-2-18-.02 GENERAL INFORMATION AND INSTRUCTIONS FOR USE

Subparagraph (a) of paragraph (2) of rule 0800-2-18-02 General Information and Instructions for Use is amended by adding and inserting in after the third sentence which ends with the words "correct amount" the following: "For purposes of these Rules, the base Medicare amount may be adjusted upward annually based upon the annual Medicare Economic Index adjustment, but the maximum allowable amount of reimbursement under these Rules shall not fall below the effective 2005 Medicare amount for at least two (2) years from 2005," so that as amended the subparagraph shall read:

- (a) Unless otherwise indicated herein, the most current, effective Medicare procedures and guidelines are hereby adopted and incorporated as part of these Rules as if fully set out herein and effective upon adoption and implementation by the CMS. Whenever there is no specific fee or methodology for reimbursement set forth in these Rules for a service, diagnostic procedure, equipment, etc., then the maximum amount of reimbursement shall be 100% of the most current effective CMS' Medicare allowable amount. The most current effective Medicare guidelines and procedures shall be followed in arriving at the correct amount. For purposes of these Rules, the base Medicare amount may be adjusted upward annually based upon the annual Medicare Economic Index adjustment, but the maximum allowable amount of reimbursement under these Rules shall not fall below the effective 2005 Medicare amount for at least two (2) years from 2005. Whenever there is no applicable Medicare code or method of reimbursement, the service, equipment, diagnostic procedure, etc. shall be reimbursed at the usual and customary amount as defined in the Medical Cost Containment Program Rules at 0800-2-17-.03(80).

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Part 3. of subparagraph (b) of paragraph (2) of rule 0800-2-18-02 General Information and Instructions for Use is amended by deleting the words "contracted or other lower price;" and adding in its place the words "other contracted price" so that as amended the part shall read:

- 3. The MCO/PPO or any other contracted price;

EMERGENCY RULES

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Subparagraph (a) of paragraph (4) of rule 0800-2-18-02 General Information and Instructions for Use is amended by deleting the words “100% of Medicare’s LUPA” and replacing it with the words “Usual and Customary Amount,” so that as amended the subparagraph shall read:

- (a) The conversion factors applicable under this Medical Fee Schedule are:

	<u>Conversion Factor</u>	<u>As a Percentage of National Medicare</u>
Anesthesiology.....	Usual and Customary Amount	
Chiropractic Care.....	\$49.27	130%
Dentistry.....	\$37.90	100%
General Surgery.....	\$75.80	200%
Home Health Care.....	Usual and Customary Amount	
Home Infusion.....	Usual and Customary Amount	
Gen. Medicine (includes unlisted specialties, Evaluation & Management, etc.)		
Office visits, E&M, etc. CPT codes.....	\$60.64	160%
Emergency care CPT codes.....	\$75.80	200%
Neurosurgery (board-eligible or certified physicians)	\$104.14	275%
(Surgery by non-board eligible physicians paid general surgery rate)		
Orthopedic Surg. (board-eligible or cert. physicians)	\$104.14	275%
(Surgery by non-board eligible physicians paid general surgery rate)		
Pathology.....	Usual and Customary Amount	
Physical and Occupational Therapy		
	For First 6 visits	\$56.85 150%
	Visits 7-12	\$49.27 130%
	Visits over 12	\$37.90 100%
Radiology	75.80	200%

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Subparagraph (b) of paragraph (4) of rule 0800-2-18-.02 is amended by deleting the following at the end of the paragraph, “** ‘LUPA’ refers to the Medicare rates for low utilization Payment Adjustment,” so that as amended the subparagraph shall read:

- (b) The appropriate conversion factor must be determined by the type of CPT code for the procedure performed in all cases except those involving orthopedic and neurosurgery. The appropriate conversion factor for all surgical CPT codes for surgical procedures by any physician other than certified and board-eligible neurosurgeons and orthopedic surgeons is \$75.80, (200% of national Medicare rates). Board-eligible and certified neurosurgeons and orthopedic surgeons shall use the neurosurgery and orthopedic surgery conversion factors for all surgery CPT codes. Evaluation and management CPT codes require the use of the associated conversion factor of \$60.64 (160% of National Medicare rates) by all physicians, including neurosurgeons and orthopedic surgeons.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

EMERGENCY RULES

0800-2-18-.07 AMBULATORY SURGICAL CENTERS AND OUTPATIENT HOSPITAL CARE INCLUDING EMERGENCY ROOM FACILITY CHARGES)

Subparagraph (h) of paragraph (1) of rule 0800-2-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges) is amended by deleting the current language in its entirety and adding a new subparagraph (1)(h), adding and inserting a new subparagraph (1)(i) and renumbering the current subparagraphs (1)(i), (1)(j), (1)(k) and (1)(l) so that as amended the subparagraphs shall read:

- (h) Facility services do not include (the following services may be billed and reimbursed separately from the facility fees, if allowed under current Medicare guidelines, with the exception of implantables, which at the discretion of the facility shall be billed and reimbursed separately in all cases and in all settings unless they are billed and reimbursed as part of a package or bundled charge):
 - 1. Physician services
 - 2. Laboratory services
 - 3. Radiology services
 - 4. Diagnostic procedures not related to the surgical procedure
 - 5. Prosthetic devices
 - 6. Ambulance services
 - 7. Orthotics
 - 8. Implantables
 - 9. DME for use in the patient's home
 - 10. CRNA or Anesthesia Physician Services (supervision of CRNA is included in the facility fee)
 - 11. Take home medications
 - 12. Take home supplies
- (i) For cases involving implantation of medical devices, the facility shall at their discretion for each individual patient case, choose to bill and shall subsequently be reimbursed at either:
 - 1. 150% of the entire Medicare OPPS payment as described above; or
 - 2. 150% of the non-device portion of the APC within the Medicare OPPS payment and separately bill and be reimbursed for implantable medical devices as described under Rule 0800-2-18-.10.
- (j) The listed services and supplies in subsection (1)(h) above shall be reimbursed according to the Medical Fee Schedule Rules, or at the usual and customary amount, as defined in these Rules, for items/services without an appropriate Medicare

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payment amount and not specifically addressed in the Medical Fee Schedule Rules.

- (k) There may be occasions in which the patient was scheduled for out patient surgery and it becomes necessary to admit the patient. All ambulatory patients who are admitted to the hospital and stay longer than 23 hours past ambulatory surgery will be paid according to the In-patient Hospital Fee Schedule Rules, Chapter 0800-2-19.
- (l) Pre-admission lab and x-ray may be billed separately from the Ambulatory Surgery bill when performed 24 hours or more prior to admission, and will be reimbursed the lesser of billed charges or the payment limit of the fee schedule. Pre-admission lab and radiology are not included in the facility fee.
- (m) Facility fees for surgical procedures not listed shall be reimbursed BR with a maximum of the usual and customary rate as defined in the Division's Rule 0800-2-17-.03(80).

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

0800-2-18-.09 PHYSICAL AND OCCUPATIONAL THERAPY GUIDELINES

Paragraph (1) of rule 0800-2-18-.09 Physical and Occupational Therapy Guidelines is amended by deleting the word "of" before "\$10,000" in the first sentence, replacing it with the words "up to" before "\$10,000.00," and adding the following at the end of the first sentence after the word "Commissioner," " , for any physician who is not validly and currently board-certified by the American Board of Medical Specialties in one of the following four (4) specialties to refer a patient to a "physician-affiliated" facility for physical therapy or occupational therapy: Orthopedic Surgery, Neurological Surgery, Physiatry or Occupational Medicine. . Supporting written documentation shall be maintained showing all patients have been fully informed they have the right to go to a facility of their choosing and full disclosure in writing shall be made of any financial or beneficial interest held by any physician referring a patient to a physician-affiliated facility," so that as amended the paragraph shall read:

- (1) It shall be a violation of these Rules, and may result in a civil penalty of up to \$10,000.00 per violation, as determined by the Commissioner, for any physician who is not validly and currently board-certified by the American Board of Medical Specialties in one of the following four (4) specialties to refer a patient to a "physician-affiliated" facility for physical therapy or occupational therapy: Orthopedic Surgery, Neurological Surgery, Physiatry or Occupational Medicine. Supporting written documentation shall be maintained showing all patients have been fully informed they have the right to go to a facility of their choosing and full disclosure in writing shall be made of any financial or beneficial interest held by any physician referring a patient to a physician-affiliated facility. For the purpose of these Medical Fee Schedule Rules, a "physician-affiliated" facility is one in which the referring physician (or her or his immediate family, which includes spouses, parents, children or spouses of children of the referring physician) or any of the referring physicians' partners associated together in clinical practice has any type of financial interest, which includes, but is not limited to, any type of ownership, interest, debt, loan, compensation, remuneration, discount, rebate, refund, dividend, distribution, subsidy, or any other form of direct or indirect benefit of any kind, whether in money or otherwise. Any hospital-based PT or OT facility shall also be deemed "physician-affiliated" if the referring physician is an employee of such hospital in which the facility is located, or if he or she receives a benefit of any kind from the referral.

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Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Subparagraph (a) of paragraph (1) of rule 0800-2-18-.09 Physical and Occupational Therapy Guidelines is amended by deleting the current language of the subparagraph in its entirety and adding a new subparagraph so that as amended the subparagraph shall read:

- (a) Notwithstanding any provision to the contrary, the physicians board-certified by the American Board of Medical Specialties in at least one of the four (4) medical specialties listed above in Rule 0800-2-18-.09(1) may refer a patient to a physician-affiliated facility if that physician determines it is in the patient's best interest to refer the patient to a specific physician-affiliated facility for rehabilitation. Any physician may refer a patient to a physician-affiliated facility if there is no other physical therapy or occupational therapy facility within fifteen (15) miles of that patient's residence or of the referring physician's office.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Paragraph (2) of rule 0800-2-18-.09 Physical and Occupational Therapy Guidelines is amended by adding the following after the word "scale" at the end of the first sentence: "based on the number of visits. The number of visits shall start over whenever surgery related to the injury is performed," so that as amended the paragraph shall read as follows:

- (2) Charges for physical and/or occupational therapy services shall be reimbursed on a sliding scale based on the number of visits. The number of visits shall start over whenever surgery related to the injury is performed. Reimbursement shall not exceed one hundred fifty percent (150%) of the participating fees prescribed in the Medicare RBRVS System fee schedule (Medicare Fee Schedule) for the first six (6) visits, and shall not exceed one hundred thirty percent (130%) for visits 7 through 12. For all visits after visit 12, reimbursement shall not exceed one hundred percent (100%).

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Paragraph (5) of rule 0800-2-18-.09 Physical and Occupational Therapy Guidelines is amended by adding additional language at the end of the paragraph so that as amended the paragraph shall read as follows:

- (5) For any procedure for which an appropriate Medicare code is not available, such as a Functional Capacity Evaluation or work hardening, the usual and customary charge, as defined in Rule 0800-2-17-.03(80), shall be the maximum amount reimbursable for such services. The current Medicare CPT codes available for Functional Capacity Evaluations are not appropriate for use under the TN Workers' Compensation Medical Fee Schedule, thus, usual and customary is the proper reimbursement methodology for these procedures.

Paragraph (6) of rule 0800-2-18-.09 Physical and Occupational Therapy Guidelines is amended by deleting the current paragraph and replacing it with a new paragraph (6) so that as amended the paragraph shall read as follows:

- (6) Whenever physical therapy and/or occupational therapy services are prescribed, then such treatment shall be reviewed pursuant to the carrier's utilization review program in accordance with the procedures set forth in Chapter 0800-2-6 of the Division's Utilization Review Rules and in accordance with Tenn. Code Ann. § 56-6-705 before physical therapy and/or occupational therapy services may be certified for payment by the carrier. Notification of

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a determination by the utilization review agent shall be mailed or otherwise communicated through electronic mail, facsimile and or telephone to the provider of record or the enrollee or other appropriate individual within two (2) business days of the receipt of the request for determination and the receipt of all information necessary to complete the review from the carrier or employer. Failure of a provider to promptly (at least seven (7) business days before the last approved treatment is rendered) and properly and timely request utilization review of such services as prescribed herein shall result in the forfeiture of any payment for non-approved services. However, failure by carrier or employer to communicate denial or approval of a properly submitted request for utilization review within five (5) business days of the receipt of the request for determination and the receipt of all information necessary to complete the review shall be deemed an approval of the treatment requested. The initial utilization review of physical therapy and/or occupational therapy services may, if necessary and appropriate, certify up to six (6) visits. Subsequent utilization review shall be conducted to certify additional physical therapy and/or occupational therapy services after six (6) visits to the PT or OT facility. Further utilization review is required after each six (6) visit increment.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

The emergency rule amendments set out herein were properly filed in the Department of State on the 10th day of October, 2006, and will be effective from the day of filing for a period of 165 days. These emergency rule amendments will remain in effect through the 24th day of March, 2007. (10-07-06)

PROPOSED RULES

TENNESSEE PEACE OFFICER STANDARDS AND TRAINING COMMISSION - 1110

Presented herein are proposed rules and amendments of the Tennessee Peace Officer Standards and Training Commission submitted pursuant to the T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the POST Commission to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules, amendments, and repeals are published. Such petition to be effective must be filed in the POST Commission Office at the Tennessee Law Enforcement Training Academy, 3025 Lebanon Road, Nashville, TN 37214, and in the Department of State, Eighth Floor, Snodgrass-Tennessee Tower, 312 8th Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of these proposed rules, contact: Gay Rye, 3025 Lebanon Road, Nashville, TN 37214.

CHAPTER 1110-1 DEFINITIONS

AMENDMENTS

Rule 1110-1-.01 Definitions. Subparagraph (a) of paragraph (1) is amended by deleting the language “and whose primary source of income is derived from employment as a police officer”, so that as amended shall read:

- (a) Full-time Police Officer is defined as any person commissioned, sworn, appointed, and/or otherwise lawfully enjoined to uphold the laws of the State of Tennessee, and/or laws or ordinances of any municipality or political subdivision of the State of Tennessee; and who is employed by any municipality or political subdivision of the State of Tennessee and whose primary responsibility is (whether directly or as an experienced, certified, supervisor/administrator of such persons), the prevention and detection of crime, and the apprehension of offenders; and, whose specifically assigned duties and/or job description reflect said primary responsibility for the prevention and detection of crime; or,

Rule 1110-1-.01 Definitions. Subparagraph (b) of paragraph (1) is amended by replacing the sentence “Part-time officers will work no more than twenty (20) hours per week or a total of no more than one hundred (100) hours per month” with “Part-time officers will work no more than twenty (20) hours per week or a total of no more than one hundred (100) hours per month for any agency or combination of agency” so that as amended shall read:

- (b) Part-time/Temporary/Reserve/Auxiliary Police Officer is defined as any person employed by any municipality or any political subdivision of the State of Tennessee whose primary responsibility is to support the full-time police officer in the prevention and detection of crime, apprehension of offenders, assisting in the prosecution of the offenders for appropriate remuneration in measure with specifically assigned duties and/or job description. Part-time

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police officers will work no more than twenty (20) hours per week or a total of no more than one hundred (100) hours per month for any agency or combination of agency. Any police officer who works in excess of the maximum hours as specified herein will be reclassified to a full-time status and must meet all requirements for standards/training as mandated under the law and Peace Officer Standards and Training Commission rules.

Provided however, in any situation where an officer is temporarily assigned for a period of one (1) month or less, to work more than twenty (20) hours per week or a total of more than one hundred (100) hours per month, such officer shall not be reclassified to a full-time status.

Rule 1110-1-.01 Definitions. Paragraph (15) is amended by deleting the words “whether working alone or with other police officers” and by adding the sentence “Full-time certified law enforcement officers may serve as special deputies”, and by adding a sentence at the end to read “Nothing in this rule will prevent a sheriff from providing a special deputy commission to someone who is a full-time certified police officer” so that as amended the definition shall read:

- (15) Special Deputy is defined within this section as any person who is assigned specific police functions as to the prevention and detection of crime and general laws of this state on a volunteer basis. Full-time certified law enforcement officers may serve as special deputies. Any police officer working on a volunteer basis shall receive no pay or benefits except for honorariums and may be utilized for an unlimited number of hours. Nothing in this rule will prevent a sheriff from providing a special deputy commission to someone who is a full-time certified police officer.

Rule 1110-1-.01 Definitions is amended by adding the proposed definition (21) “Paired with” so that as amended the definition shall read:

- (21) Paired with is defined as in the presence of a field training officer or other full time certified supervisory officer.

Authority: T.C.A. §§38-8-101 and 38-8-104.

CHAPTER 1110-2 CERTIFICATION

AMENDMENTS

Rule 1110-2-.01 Persons Required To Be Certified. Paragraph (1) is amended by adding “and maintain” so that as amended shall read:

- (1) All persons, who are employed as full-time law enforcement officers on or after July 1, 1982, shall comply with and maintain the pre-employment standards and meet the Basic Law Enforcement Training requirements before being certified as law enforcement officers.

Authority: T.C.A. §38-8-105.

Rule 1110-2-.03 Law Enforcement Officer Certification Requirements. Paragraph (1) is amended by adding a subparagraph (e) so that as amended shall read:

PROPOSED RULES

- (e) The agency must present a copy of any DD-214s, DD-215s and DD-873s along with the application for certification.

Rule 1110-2-.03 Law Enforcement Officer Certification Requirements. Subparagraph (h) of paragraph (1) is amended by changing “Have good moral character as determined by a thorough investigation conducted by the employing agency; and” to “Have good moral character as determined by a thorough investigation conducted by the employing agency and/or the POST Commission; and” so that as amended shall read:

- (h) Have good moral character as determined by a thorough investigation conducted by the employing agency and/or the POST Commission; and

Authority: T.C.A. §§38-8-104, 38-8-105, 38-8-106, 38-8-107, 38-8-111, and 38-8-111(f).

Rule 1110-2-.04 Denial Suspension, and Revocation of Certification. Subparagraph (b) of paragraph (2) is amended by changing “thirty (30)” to “fifteen (15)”, and by adding two sentences to the end so that as amended the subparagraph shall read:

- (b) Notification Required. Law enforcement agencies suspending for fifteen (15) days or longer, or discharging certified law enforcement officers for disciplinary reasons, shall inform the Commission within ten (10) days. Any change in the status of this disciplinary action should also be reported to the Commission within ten (10) days. Change of status form shall be submitted on any change in this disciplinary action.

Authority: T.C.A. §§38-8-104(b), 38-8-105, and 38-8-106.

CHAPTER 1110-3 CURRICULA AND COURSE OF INSTRUCTION

AMENDMENTS

Rule 1110-3-.04 Certification for Specialized Police Instructors. Part 1 of subparagraph (a) of paragraph (1) is amended by changing “ten (10)” to “five (5)” so that as amended part 1 of the subparagraph shall read:

1. An applicant shall have at least five (5) years of experience as a full-time sworn law enforcement officer; or, equivalent combination of education and experience as determined by the appointing authority.

Authority: T.C.A. §38-8-104.

PROPOSED RULES

CHAPTER 1110-4 IN-SERVICE TRAINING REQUIREMENTS

AMENDMENTS

Rule 1110-4-.03 Appointment of Training Officer is amended by deleting the words “conducting a forty (40) hour in-service training course” and by changing the words “and the Tennessee Law Enforcement Training Officer Association...” with “and/or the Tennessee Law Enforcement Training Officer Association” so that as amended the paragraph shall read:

Effective January 1, 1994, each law enforcement agency shall designate one Training Officer who meets the POST Commission General Departmental Instructor standards for certification. The General Departmental Instructor is responsible for coordinating in-service training programs, developing lesson plans, goals and objectives, and may be required to instruct in more than one subject area. All training officers, including a General Departmental Instructor, shall attend a POST Commission workshop at a time and place determined by the POST Commission and/or the Tennessee Law Enforcement Training Officer Association as part of their annual in-service training requirement for training officer.

Authority: T.C.A. §§38-8-104 and 38-8-111.

Paragraph (1) of rule 1110-4-.09 Approval of Specialized Schools is amended by adding a sentence to the end of the paragraph so that as amended shall read:

- (1) If an officer attends a specialized school appropriate to his/her rank and responsibility, the eligibility of the school must be approved by the Commission. Only schools of a law enforcement related nature will be considered for in-service credit toward meeting the forty (40) hour training requirement. A curriculum of each school and proof of successful completion by the individual attendee is required. The specialized substitution form along with a copy of the Certificate, a copy of the schedule and, if no test is given, a critique from the Attending Officer to his or her supervisor must be submitted to POST two (2) weeks after the completion of the school.

Paragraph (4) of rule 1110-4-.09 Approval of Specialized Schools is amended by deleting the paragraph and adding “Any officer moving to a specialized assignment involving the use of a specialized emergency conveyance shall receive sufficient training to meet the job requirements. Specialized emergency conveyance includes, but is not limited to, motorcycle, bicycle, horse” so that as amended shall read:

- (4) Any officer moving to a specialized assignment involving the use of a specialized emergency conveyance shall receive sufficient training to meet the job requirements. Specialized emergency conveyance includes, but is not limited to, motorcycle, bicycle, horse.

Authority: T.C.A. §§38-8-107 and 38-8-111.

Rule 1110-4-.11 Approval of Law Enforcement Courses Conducted By Colleges and Universities for In-Service Credit is amended by adding paragraph (3) so that as amended shall read:

- (3) All on-line classes must be pre-approved by the POST Commission on a case by case basis.

Authority: T.C.A §38-8-104.

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Rule 1110-4-.12 Successful Completion of In-Service Training for Salary Supplement Payment is amended by deleting the words “and 75% on the defensive driving qualification” and by replacing the words “Any officer who fails the test, firearms, or driving qualification must...” to “Any officer who fails the test and firearms qualification must...” so that as amended the rule shall read:

1110-4-.12 SUCCESSFUL COMPLETION OF IN-SERVICE TRAINING FOR SALARY SUPPLEMENT PAYMENT. Failure of an individual certified officer to successfully complete the in-service training requirement will result in the officer’s loss of eligibility for the pay supplement in §38-8-111. Failure of this individual officer to successfully complete another in-service training session during the next calendar year will result in loss of certification.

The officer must obtain a passing grade of 75% on the test and 75% on the firearms qualification. The in-service training session is not complete until the officer has taken the test and qualified with his firearm. Any officer who fails the test and firearms qualification must make up the failing score during the calendar year in order to keep their certification.

Authority: T.C.A. §38-8-107.

CHAPTER 1110-5 FORMS AND DOCUMENTS

AMENDMENTS

Rule 1110-5-.01 Forms Required for Peace Officer Certification. Paragraph (2) is amended by deleting the first two sentences and replacing it with “This form shall be submitted to the Commission Office immediately upon an officer’s separation or immediately upon a status change that will exceed thirty (30) days” so that as amended shall read:

- (2) POST – 2 Change of Status. This form shall be submitted to the Commission Office immediately upon an officer’s separation or immediately upon a status change that will exceed thirty (30) days. Such changes shall include the following:

Authority: T.C.A. §§38-8-106, 38-8-107, 38-8-108, and 38-8-111.

CHAPTER 1110-7 BASIC TRAINING ACADEMY MINIMUM STANDARDS

AMENDMENTS

Rule 1110-7-.01 Minimum Curricula Requirements. Part 2 of subparagraph (b) of paragraph (1) is amended by changing “20 hours” to “10 hours” so that as amended shall read:

2. Emergency Medical Training – 10 hours.

Part 3 of subparagraph (b) of paragraph (1) of rule 1110-7-.01 Minimum Curricula Requirements is amended by changing “100 hours” to “75 hours” so that as amended shall read:

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3. Patrol Procedures – 75 hours.

Part 8 of subparagraph (b) of paragraph (1) of rule 1110-7-.01 Minimum Curricula Requirements is amended by changing “18 hours” to “10 hours” so that as amended shall read:

8. Written Communications – 10 hours.

Part 9 of subparagraph (b) of paragraph (1) of rule 1110-7-.01 Minimum Curricula Requirements is amended by deleting “Criminology.” so that as amended shall read:

9. Human Relations – 30 hours.

- (i) Sociology of groups, ethnic and racial.
- (ii) Psychology of human behavior.
- (iii) Basic street gang culture.
- (iv) Sexual harassment.
- (v) Domestic terrorism.

Authority: T.C.A. §38-8-104.

Subparagraph (b) of Paragraph (1) of rule 1110-7-.03 Buildings and Facilities is amended by changing “fifty (50)” with “seventy-five (75)” so that as amended the subparagraph shall read:

- (b) Class size shall be limited to a maximum of seventy-five (75) students. However, twenty (20) percent of the total class hours in the Basic School can be taught in a seminar setting; therefore a greater number than seventy-five (75) students may be allowed. No class other than the lecture-type setting can have more than seventy-five (75) students in any one classroom.

Authority: T.C.A. §§38-8-104 and 68-18-101 et seq.

CHAPTER 1110-8 PART-TIME/TEMPORARY/AUXILIARY LAW ENFORCEMENT OFFICERS AMENDMENTS

Rule 1110-8-.02 Preemployment Requirements is amended by deleting the language in subparagraphs (a) through (h) and adding subparagraph (a) through (i) so that as amended the paragraph shall read:

1110-8-.02 PREEMPLOYMENT REQUIREMENTS.

- (1) After January 1, 1989, any person employed/utilized as part-time/temporary/reserve/auxiliary law enforcement officer or as a special deputy shall:

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- (a) Be at least eighteen (18) years of age;
- (b) Be a citizen of the United States;
- (c) Be a high school graduate or possess equivalence. No waivers will be granted for minimum education requirements;
- (d) Not have been convicted of or pleaded guilty to or entered a plea of nolo contendere to any felony charge or to any violation of any federal or state laws or city ordinances relating to force, violence, theft, dishonesty, gambling, liquor or controlled substances;
 - 1. The commission may consider a waiver from pre-employment requirements for a person who has been convicted of, or entered a plea of nolo contendere to any violation of any federal or state laws or city ordinances (excluding felony charges) relating to force, violence, theft, dishonesty, gambling, liquor (including driving while intoxicated), or controlled substances when the offense was classed as a misdemeanor.
 - 2. No waiver shall be granted while officer is under the jurisdiction of the court or considered on probation, whether supervised or unsupervised, and in the case of "driving while intoxicated" the officer shall have met all the requirements of the Tennessee Department of Safety and have been restored his/her permanent driving privileges under the laws of the State of Tennessee.
 - 3. A person who has had misdemeanor charges expunged may be considered for certification. It is the responsibility of the officer and employing agency to present information and court documents relating to expungement to the Commission.
 - 4. No waiver will be granted for felony convictions or a narcotics violation that could result in a felony charge.
 - 5. The agency must present a written request for waiver for these charges and provide a copy of the final court disposition of the case.
- (e) Not have been released or discharged under any other than honorable discharge from any of the armed forces of the United States;
- (f) Have his fingerprints on file with the Tennessee Bureau of Investigation;
- (g) Have passed a physical examination by a licensed physician;
- (h) Have good moral character as determined by a thorough investigation conducted by the employing agency; and
- (i) Have been certified by a Tennessee Licensed Health Care Provider qualified in the psychiatric or psychological fields as being free from any disorder, as set forth in the current edition of the DSM, that would, in the professional judgment of the examiner, impair the subject's ability to perform any essential function of the job.
 - 1. No waiver will be granted for mental disorders.

PROPOSED RULES

Rule 1110-8-.03 Training Requirements is amended by changing “forty (40) hours” to “eighty (80) hours and by adding language at the end so that as amended the paragraph shall read:

1110-8-.03 TRAINING REQUIREMENTS. After January 1, 1989, any person newly employed/utilized as a part-time/temporary/reserve/auxiliary law enforcement officer or special deputy shall receive eighty (80) hours of training in whatever duties they are required to perform by the employing agency. This training shall be accomplished during the first calendar year of employment. During this initial period, prior to receiving eighty (80) hours of training, the part-time/temporary/reserve/auxiliary law enforcement officer must be paired with a field training officer or other certified officer. Any part-time/temporary/reserve/auxiliary law enforcement officer who is hired within five years of having served as a full-time, certified law enforcement officer will continue to be exempt from the requirement that he/she be paired with a full-time, certified officer as long as he/she completes in-service training each year and has no break in service.

Authority: T.C.A. §38-8-104.

CHAPTER 1110-9 CRITERIA FOR WAIVERS

AMENDMENTS

Rule 1110-9-.01 Submission of Waiver Request is amended by adding a sentence to the end “The requesting department shall be represented at the hearing by its designee” so that as amended the rule shall read:

1110-9-.01 SUBMISSION OF WAIVER REQUEST. Request for waiver (except for those preemployment requirements) must be submitted by the agency currently employing the person requiring a waiver. Request for waiver of preemployment requirements must be submitted by the agency having an interest in hiring a person requiring such waiver prior to that persons employment. Request for waiver filed/submitted by an individual will not be accepted by the Commission. The requesting department shall be represented at the hearing by its designee.

Authority: T.C.A. §§38-8-104 and 38-8-106.

Rule 1110-9-.04 Waiver of Preemployment Requirements. Subpart (ii) of Part 2 of subparagraph (a) of paragraph (1) is amended by deleting “Undesirable Discharge” and replacing with “Other Than Honorable Discharge” and, by deleting subpart (iv), and amending subpart (ii) and (iii) so that as amended shall read:

2. Waivers will not be granted from preemployment requirements for the following separation from military service:
 - (i) Dishonorable Discharge
 - (ii) Bad Conduct Discharge
 - (iii) Other Than Honorable Discharge

PROPOSED RULES

Authority: *T.C.A. §§38-8-104, 38-8-105, and 38-8-106.*

The proposed rules set out herein were properly filed in the Department of State on the 2nd day of October, 2006, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of February, 2007. (10-01-06)

PUBLIC NECESSITY RULES

PUBLIC NECESSITY RULES NOW IN EFFECT

For text of public necessity rules see T.A.R. cited at

<http://www.tennessee.gov/sos/pub/tar/index.htm>

or

the Department of State's website at

http://www.state.tn.us/sos/rules/necessity/nec_index.htm

- 0580 - Ethics Commission - Public Necessity Rules regulating lobbyists and employers of lobbyists, chapter 0580-1 Rules Pertaining to Lobbyists and Employers of Lobbyist, 9 T.A.R. (September 2006) - Filed August 9, 2006; effective through January 21, 2007. (08-08-06)
- 1680 - Department of Transportation - Environmental Division - Public Necessity Rules establishing requirements that the States must meet in order to assure that there is effective control of outdoor advertising, chapter 1680-2-3 Control of Outdoor Advertising, 9 T.A.R. (September 2006) Filed August 1, 2006; effective October 1, 2006 through March 15, 2007. (08-01-06)

RULEMAKING HEARINGS

BOARD OF ELECTROLYSIS EXAMINERS - 0540

There will be a hearing before the Tennessee Board of Electrolysis Examiners to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-26-108. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Division of Health Related Board's Conference Room on the Third Floor of the Heritage Place Building located at 227 French Landing, Nashville, TN at 2:30 p.m. (CDT) on the 3rd day of January, 2007.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 0540-1-.04, Qualifications for Licensure, is amended by deleting paragraphs (3) and (5) but not their subparagraphs and substituting instead the following language, so that as amended, the new paragraphs (3) and (5) but not their subparagraphs shall read:

- (3) To qualify for licensure as an electrologist by reciprocity (licensed in another state), the applicant must:
- (5) To qualify for licensure, internationally educated applicants, in addition to meeting the requirements specified in either Rule 0540-1-.04 (l), (3), (4) or (5), must:

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-26-108, 63-26-111, and 63-26-117.

Rule 0540-1-.04, Qualifications for Licensure, is amended by inserting the following language as new paragraph (2) and renumbering the existing paragraphs (2) through (6) as paragraphs (3) through (7):

- (2) To qualify for licensure as an electrologist without examination and without licensure in another state, the applicant must:

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- (a) Meet the requirements of Rule 0540-1-.04 (1) (a) and (b) and Rule 0540-1-.04 (1) (c) 1.;
- (b) Provide documentation of having practiced electrology five (5) years or more in a state which does not require a license for such practice by submitting photocopies of paychecks, paycheck stubs, Internal Revenue Service (IRS) Forms W-2 or 1099-Misc., Schedules C or C-EZ for IRS Form 1040, or Schedule K-1 for IRS Form 1065 to verify proof of income (or loss) from the practice of electrology; and
- (c) Cause documentation to be submitted from the certifying agency directly to the Board administrative office that he/she is a Certified Professional Electrologist (CPE) certified by the American Electrology Association, or is a Clinical Certified Electrologist (CCE) or Clinical Medical Electrologist (CME) certified by the Society of Clinical and Medical Electrologists.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-26-108, 63-26-111, 63-26-115, and Public Chapter 742 of the Public Acts of 2006.

Rule 0540-1-.05, Procedures for Licensure, is amended by deleting paragraphs (4) and (7) in their entirety and substituting instead the following language, and is further amended by deleting paragraph (9) but not its subparagraphs and substituting instead the following language, and is further amended by deleting paragraph (11) in its entirety and substituting instead the following language, so that as amended, the new paragraphs (4) and (7), the new paragraph (9) but not its subparagraphs, and the new paragraph (11) shall read:

- (4) An applicant shall pay, at the time of application, the non-refundable application, examination fees and state regulatory fee as provided in Rule 0540-1-.06. Reciprocity (licensed in another state) applicants and applicants for licensure without examination and without licensure in another state shall also pay at the time of application the reciprocity fee as provided in Rule 0540-1-.06.
- (7) Except for limited licensure applicants and applicants for licensure without examination and without licensure in another state, applicants shall cause to be submitted directly to the Board's administrative office from an accredited college or university an official transcript verifying that the general education requirements pursuant to Rule 0540-1-.04 (I) (c) 3. have been met.
- (9) Except for limited licensure applicants, electrology instructor applicants, and applicants for licensure without examination and without licensure in another state, applicants shall cause to be submitted directly from the school of electrology an original letter on the school's letterhead and signed by the program director verifying the applicant has successfully completed the school's course of study. To be acceptable, the school's course of study and curriculum must comply with or be equivalent to Tennessee's electrology school requirements pursuant to T.C.A. § 63-26-111 (4) (A) and (B). If the school no longer exists, the following documentation will be reviewed by the board for acceptability.
- (11) Except for electrology instructor applicants and applicants for licensure without examination and without licensure in another state, applicants shall request that his/her written examination scores, pursuant to Rule 0540-1-.08, be submitted directly to the Board's administrative office from the American Electrology Association or the Society of Clinical and Medical Electrologists.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-26-108, 63-26-111, 63-26-112, 63-26-115, 63-26-119, and Public Chapter 742 of the Public Acts of 2006.

Rule 0540-1-.06, Fees, is amended by deleting subparagraph (1) (f) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (f) shall read:

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- (1) (f) Reciprocity License fee - A non-refundable fee to be paid at the time an application for licensure is filed by reciprocity (licensed in another state) applicants and by applicants for licensure without examination and without licensure in another state. The fee is in addition to the application fee.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-26-108, 63-26-109, 63-26-115, 63-26-117, and Public Chapter 742 of the Public Acts of 2006.

Rule 0540-1-.08, Examinations, is amended by deleting paragraph (1) but not its subparagraphs and substituting instead the following language, so that as amended, the new paragraph (1) but not its subparagraphs shall read:

- (1) Electrologist Examination. An individual seeking licensure as an electrologist, either by examination, limited licensure, or reciprocity (licensed in another state) shall be required to pass each of the following examinations prior to licensure:

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-26-108, 63-26-117, and Public Chapter 742 of the Public Acts of 2006.

Rule 0540-1-.12, Continuing Education, is amended by deleting paragraph (5) in its entirety and substituting instead the following language, and is further amended by inserting the following language as new paragraph (7) and renumbering the existing paragraph (7) as paragraph (8), so that as amended, the new paragraphs (5) and (7) shall read:

- (5) Continuing Education for Reactivation of Retired License
 - (a) An individual whose license has been retired for one (1) year or less will be required to fulfill continuing education requirements as outlined in this rule as a prerequisite to reactivation. Those hours will be considered replacement hours and can not be counted towards meeting the annual requirements of the following year.
 - (b) Along with the reactivation request, any electrologist who applies for reactivation of a license which has been retired for more than one (1) year must submit proof of attendance and completion of ten (10) hours of Board-approved continuing education. The electrologist who has retired his license may receive credit for courses completed during the time the license was retired provided that at least five (5) hours were completed within one (1) year preceding the application for reactivation.
- (7) Extension of Time to Complete or Waiver of Continuing Education Requirements
 - (a) The Board may grant an extension of the deadline to complete the annual continuing education requirements or the Board may grant a waiver of the need to attend and complete the annual continuing education requirements if it can be shown that compliance is beyond the physical or mental capabilities of the person seeking the extension or waiver.
 - (b) Extensions or waivers of the deadline will be considered only on an individual basis and may be requested by submitting the following items to the Board Administrative Office prior to the expiration of the calendar year (December 31) in which the continuing education is due:

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1. A written request for an extension or waiver which specifies the deadline sought to be extended or the requirements sought to be waived, and a written and signed explanation of the reason for the request; and
 2. Any documentation which supports the reason(s) for the extension or waiver request or which is subsequently requested by the Board.
- (c) A waiver or deadline extension approved by the Board is effective only for the calendar year for which either is sought.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-26-108, and 63-26-121.

0540-1-.19 Board Meetings, Officers, Consultants, Records, and Declaratory Orders, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraphs (9) and (10), so that as amended, the new catchline and the new paragraphs (9) and (10) shall read:

0540-1-.19 BOARD MEETINGS, OFFICERS, CONSULTANTS, DECLARATORY ORDERS, AND SCREENING PANELS.

- (9) Screening Panels - The Board adopts, as if fully set out herein, rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.
- (10) The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-138, 63-26-108, and 63-26-123.

The notice of rulemaking set out herein was properly filed in the Department of State on the 19th day of October, 2006. (10-16-06)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400 DIVISION OF AIR POLLUTION CONTROL

There will be a public hearing before the Technical Secretary of the Tennessee Air Pollution Control Board to consider the promulgation of an amendment to the Tennessee Air Pollution Control Regulations and the State Implementation Plan pursuant to Tennessee Code Annotated, Section 68-201-105. The comments received at this hearing will be presented to the Tennessee Air Pollution Control Board for their consideration in regards to the proposed regulatory amendment. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-201 et. seq. and will take place in the 9th Floor Conference Room, Division of Air Pollution Control, located at 9th Floor L&C Annex, 401 Church Street, Nashville, Tennessee 37243 at 9:00 a.m. on the 19th day of December, 2006.

Written comments will be included in the hearing records if received by the close of business on December 19, 2006, at the office of the Technical Secretary, Tennessee Air Pollution Control Board, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531. Additionally, comments may be submitted via attachments through electronic mail until the close of business on December 19, 2006.

Any individuals with disabilities who wish to participate in these proceedings or to review these filings should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be in person, by writing, telephone, or other means, and should be made no less than ten (10) days prior to December 19, 2006, or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator, 12th Floor L&C Tower, 401 Church Street, Nashville TN 37243, (615) 532-0207. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

If you have any questions about the origination of this rule change, you may contact Travis Blake at 615-532-0617. For complete copies of the text of the notice, please contact Travis Blake, Department of Environment and Conservation, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243.

SUMMARY AND SUBSTANCE OF PROPOSED RULE

SUMMARY

Rule 1200-3-14-.04 of the Tennessee Air Pollution Control Regulations (CAIR SO₂ Annual Trading Program) is being amended. This rule requires the owner/operators of affected electric generating units (EGUs) to comply with annual SO₂ emission limitations by limiting emissions from these sources, or by purchasing emission credits through a cap-and-trade program. The proposed changes will update the language of EPA's Federal rule (70 FR 25362, May 12, 2005) with EPA's additions and corrections to the Federal rule language (71 FR 25386, April 28, 2006). Only the portions of the rule affected by these amendments are open to public comment.

SUBSTANCE OF PROPOSED RULE

CHAPTER 1200-3-14 CAIR SO₂ ANNUAL TRADING PROGRAM

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1200-3-14-.04 CAIR SO₂ Annual Trading Program

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1200-3-14-.04 CAIR SO₂ ANNUAL TRADING PROGRAM (40 CFR 96)

- (1) The provisions of 40 CFR Part 96 concerning the CAIR SO₂ Annual Trading Program are hereby adopted by reference:

- (2) PART 96--CAIR SO₂ Annual Trading Program

Subpart AAA – CAIR SO₂ Trading Program General Provisions

- 96.201 Purpose.
- 96.202 Definitions.
- 96.203 Measurements, abbreviations, and acronyms.
- 96.204 Applicability.
- 96.205 Retired unit exemption.
- 96.206 Standard requirements.
- 96.207 Computation of time.
- 96.208 Appeal Procedures.

Subpart BBB – CAIR Designated Representative for CAIR SO₂ Sources 96.210 Authorization and responsibilities of CAIR designated representative.

- 96.211 Alternate CAIR designated representative.
- 96.212 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.
- 96.213 Certificate of representation.
- 96.214 Objections concerning CAIR designated representative.

Subpart CCC – Permits

- 96.220 General CAIR SO₂ Trading Program permit requirements.
- 96.221 Submission of CAIR permit applications.
- 96.222 Information requirements for CAIR permit applications.
- 96.223 CAIR permit contents and term.
- 96.224 CAIR permit revisions.

Subpart DDD – [Reserved]

Subpart EEE – [Reserved]

Subpart FFF – CAIR SO₂ Allowance Tracking System

- 96.250 [Reserved]
- 96.251 Establishment of accounts.
- 96.252 Responsibilities of CAIR authorized account representative.
- 96.253 Recordation of CAIR SO₂ allowances.
- 96.254 Compliance with CAIR SO₂ emissions limitation.
- 96.255 Banking.
- 96.256 Account error.
- 96.257 Closing of general accounts.

Subpart GGG – CAIR SO₂ Allowance Transfers

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- 96.260 Submission of CAIR SO₂ allowance transfers.
- 96.261 EPA recordation.
- 96.262 Notification.

Subpart HHH – Monitoring and Reporting

- 96.270 General requirements.
- 96.271 Initial certification and recertification procedures.
- 96.272 Out of control periods.
- 96.273 Notifications.
- 96.274 Recordkeeping and reporting.
- 96.275 Petitions.
- 96.276 Additional requirements to provide heat input data.

Subpart III – CAIR SO₂ Opt-in Units

- 96.280 Applicability.
- 96.281 General.
- 96.282 CAIR designated representative.
- 96.283 Applying for CAIR opt-in permit.
- 96.284 Opt-in process.
- 96.285 CAIR opt-in permit contents.
- 96.286 Withdrawal from CAIR SO₂ Trading Program.
- 96.287 Change in regulatory status.
- 96.288 SO₂ allowance allocations to CAIR SO₂ opt-in units.

Subpart AAA—CAIR SO₂ Trading Program General Provisions

§ 96.201 Purpose.

This subpart and subparts BBB through III establish the model rule comprising general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the State Clean Air Interstate Rule (CAIR) SO₂ Trading Program, under section 110 of the Clean Air Act and § 51.124 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide. The owner or operator of a unit or a source shall comply with the requirements of this subpart and subparts BBB through III as a matter of federal law only if the State with jurisdiction over the unit and the source incorporates by reference such subparts or otherwise adopts the requirements of such subparts in accordance with §51.124(o)(1) or (2) of this chapter, the State submits to the Administrator one or more revisions of the State implementation plan that include such adoption, and the Administrator approves such revisions. If the State adopts the requirements of such subparts in accordance with § 51.124(o)(1) or (2) of this chapter, then the State authorizes the Administrator to assist the State in implementing the CAIR SO₂ Trading Program by carrying out the functions set forth for the Administrator in such subparts.

§ 96.202 Definitions.

The terms used in this subpart and subparts BBB through III shall have the meanings set forth in this section as follows:

Account number means the identification number given by the Administrator to each CAIR SO₂ Allowance Tracking System account.

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Acid Rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

Acid Rain Program means a multistate sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or allocation means, with regard to CAIR SO₂ allowances issued under the Acid Rain Program, the determination by the Administrator of the amount of such CAIR SO₂ allowances to be initially credited to a CAIR SO₂ unit or other entity and, with regard to CAIR SO₂ allowances issued under provisions of a State implementation plan that are approved under §51.124(o)(1) or (2) or (r) of this chapter or §97.288 of this chapter, the determination by a permitting authority of the amount of such CAIR SO₂ allowances to be initially credited to a CAIR SO₂ unit or other entity.

Allowance transfer deadline means, for a control period, midnight of March 1 (if it is a business day), or midnight of the first business day thereafter (if March 1 is not a business day) immediately following the control period and is the deadline by which a CAIR SO₂ allowance transfer must be submitted for recordation in a CAIR SO₂ source's compliance account in order to be used to meet the source's CAIR SO₂ emissions limitation for such control period in accordance with § 96.254.

Alternate CAIR designated representative means, for a CAIR SO₂ source and each CAIR SO₂ unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source in accordance with subparts BBB and III of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR SO₂ Trading Program. If the CAIR SO₂ source is also a CAIR NO_x source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_x Annual Trading Program. If the CAIR SO₂ source is also a CAIR NO_x Ozone Season source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_x Ozone Season Trading Program. If the CAIR SO₂ source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program. If the CAIR SO₂ source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate Hg designated representative under the Hg Budget Trading Program.

Automated data acquisition and handling system or DAHS means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under subpart HHH of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart HHH of this part.

Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

CAIR authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with subparts BBB, FFF, and III of this part, to transfer and

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otherwise dispose of CAIR SO₂ allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

CAIR designated representative means, for a CAIR SO₂ source and each CAIR SO₂ unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with subparts BBB and III of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR SO₂ Trading Program. If the CAIR SO₂ source is also a CAIR NO_x source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_x Annual Trading Program. If the CAIR SO₂ source is also a CAIR NO_x Ozone Season source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_x Ozone Season Trading Program. If the CAIR SO₂ source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program. If the CAIR SO₂ source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the Hg designated representative under the Hg Budget Trading Program.

CAIR NO_x Annual Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AA through II of this part and § 51.123 of this chapter or established by the Administrator in accordance with subparts AA through II of part 97 of this chapter and §§51.123(p) and 52.35 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

CAIR NO_x Ozone Season source means a source that is subject to the CAIR NO_x Ozone Season Trading Program.

CAIR NO_x Ozone Season Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAAA through IIII of this part and §51.123 of this chapter or established by the Administrator in accordance with subparts AAAA through IIII of part 97 of this chapter and §§51.123(ee) and 52.35 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

CAIR NO_x source means a source that is subject to the CAIR NO_x Annual Trading Program.

CAIR permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under subpart CCC of this part, including any permit revisions, specifying the CAIR SO₂ Trading Program requirements applicable to a CAIR SO₂ source, to each CAIR SO₂ unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

CAIR SO₂ allowance means a limited authorization issued by the Administrator under the Acid Rain Program, or by a permitting authority under provisions of a State implementation plan that are approved under §51.124(o)(1) or (2) or (r) of this chapter or §97.288 of this chapter, to emit sulfur dioxide during the control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR SO₂ Trading Program as follows:

- (1) For one CAIR SO₂ allowance allocated for a control period in a year before 2010, one ton of sulfur dioxide, except as provided in § 96.254(b);
- (2) For one CAIR SO₂ allowance allocated for a control period in 2010 through 2014, 0.50 ton of sulfur dioxide, except as provided in § 96.254(b); and
- (3) For one CAIR SO₂ allowance allocated for a control period in 2015 or later, 0.35 ton of sulfur dioxide, except as provided in § 96.254(b).

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- (4) An authorization to emit sulfur dioxide that is not issued under the Acid Rain Program, provisions of a State implementation plan that is approved under § 51.124(o)(1) or (2) of this chapter, or §97.288 of this chapter shall not be a CAIR SO₂ allowance.

CAIR SO₂ allowance deduction or deduct CAIR SO₂ allowances means the permanent withdrawal of CAIR SO₂ allowances by the Administrator from a compliance account, e. g., in order to account for a specified number of tons of total sulfur dioxide emissions from all CAIR SO₂ units at a CAIR SO₂ source for a control period, determined in accordance with subpart HHH of this part, or to account for excess emissions.

CAIR SO₂ Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of CAIR SO₂ allowances under the CAIR SO₂ Trading Program. This is the same system as the Allowance Tracking System under § 72.2 of this chapter by which the Administrator records allocations, deduction, and transfers of Acid Rain SO₂ allowances under the Acid Rain Program.

CAIR SO₂ Allowance Tracking System account means an account in the CAIR SO₂ Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR SO₂ allowances. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

CAIR SO₂ allowances held or hold CAIR SO₂ allowances means the CAIR SO₂ allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FFF, GGG, and III of this part or part 73 of this chapter, in a CAIR SO₂ Allowance Tracking System account.

CAIR SO₂ emissions limitation means, for a CAIR SO₂ source, the tonnage equivalent, in SO₂ emissions in a control period, of the CAIR SO₂ allowances available for deduction for the source under § 96.254(a) and (b) for the control period.

CAIR SO₂ source means a source that includes one or more CAIR SO₂ units.

CAIR SO₂ Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAA through III of this part and § 51.124 of this chapter or established by the Administrator in accordance with subparts AAA through III of part 97 of this chapter and §§51.124(r) and 52.36 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

CAIR SO₂ unit means a unit that is subject to the CAIR SO₂ Trading Program under § 96.204 and, except for purposes of § 96.205, a CAIR SO₂ opt-in unit under subpart III of this part.

Clean Air Act or CAA means the Clean Air Act, 42 U.S.C. 7401, et seq.

Coal means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

Coal-derived fuel means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

Coal-fired means combusting any amount of coal or coal-derived fuel, alone, or in combination with any amount of any other fuel.

Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:

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- (1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and
- (2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity—
 - (i) For a topping-cycle cogeneration unit,
 - (A) Useful thermal energy not less than 5 percent of total energy output; and
 - (B) Useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.
 - (ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Combustion turbine means:

- (1) An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and
- (2) If the enclosed device under paragraph (1) of this definition is combined cycle, any associated duct burner, heat recovery steam generator, and steam turbine.

Commence commercial operation means, with regard to a unit:

- (1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 96.205 and § 96.284(h).
 - (i) For a unit that is a CAIR SO₂ unit under § 96.204 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.
 - (ii) For a unit that is a CAIR SO₂ unit under § 96.204 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.
- (2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.205, for a unit that is not a CAIR SO₂ unit under § 96.204 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR SO₂ unit under § 96.204.

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- (i) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.
- (ii) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

Commence operation means:

- (1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in § 96.284(h).
- (2) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.
- (3) For a unit that is replaced by a unit at the same source (e.g., repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate, except as provided in (96.284(h).

Common stack means a single flue through which emissions from 2 or more units are exhausted.

Compliance account means a CAIR SO₂ Allowance Tracking System account, established by the Administrator for a CAIR SO₂ source subject to an Acid Rain emissions limitations under § 73.31(a) or (b) of this chapter or for any other CAIR SO₂ source under subpart FFF or III of this part, in which any CAIR SO₂ allowance allocations for the CAIR SO₂ units at the source are initially recorded and in which are held any CAIR SO₂ allowances available for use for a control period in order to meet the source's CAIR SO₂ emissions limitation in accordance with § 96.254.

Continuous emission monitoring system or CEMS means the equipment required under subpart HHH of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of sulfur dioxide emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with part 75 of this chapter. The following systems are the principal types of continuous emission monitoring systems required under subpart HHH of this part:

- (1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);
- (2) A sulfur dioxide monitoring system, consisting of a SO₂ pollutant concentration monitor and an automated data acquisition handling system and providing a permanent, continuous record of SO₂ emissions, in parts per million (ppm);

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- (3) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H₂O;
- (4) A carbon dioxide monitoring system, consisting of a CO₂ pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO₂ concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO₂ emissions, in percent CO₂; and
- (5) An oxygen monitoring system, consisting of an O₂ concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O₂ in percent O₂.

Control period means the period beginning January 1 of a calendar year, except as provided in §96.206(c)(2), and ending on December 31 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the CAIR designated representative and as determined by the Administrator in accordance with subpart HHH of this part.

Excess emissions means any ton, or portion of a ton, of sulfur dioxide emitted by the CAIR SO₂ units at a CAIR SO₂ source during a control period that exceeds the CAIR SO₂ emissions limitation for the source, provided that any portion of a ton of excess emissions shall be treated as one ton of excess emissions.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

General account means a CAIR SO₂ Allowance Tracking System account, established under subpart FFF of this part, that is not a compliance account.

Generator means a device that produces electricity.

Heat input means, with regard to a specified period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the CAIR designated representative and determined by the Administrator in accordance with subpart HHH of this part and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Heat input rate means the amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Hg Budget Trading Program means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance subpart HHHH of part 60 of this chapter and § 60.24(h)(6), or established by the Administrator under section 111 of the Clean Air Act, as a means of reducing national Hg emissions.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or

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percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

- (1) For the life of the unit;
- (2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or
- (3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

Monitoring system means any monitoring system that meets the requirements of subpart HHH of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

Most stringent State or Federal SO₂ emissions limitation means, with regard to a unit, the lowest SO₂ emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as of such installation as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as of such completion as specified by the person conducting the physical change.

Operator means any person who operates, controls, or supervises a CAIR SO₂ unit or a CAIR SO₂ source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Owner means any of the following persons:

- (1) With regard to a CAIR SO₂ source or a CAIR SO₂ unit at a source, respectively:
 - (i) Any holder of any portion of the legal or equitable title in a CAIR SO₂ unit at the source or the CAIR SO₂ unit;
 - (ii) Any holder of a leasehold interest in a CAIR SO₂ unit at the source or the CAIR SO₂ unit; or
 - (iii) Any purchaser of power from a CAIR SO₂ unit at the source or the CAIR SO₂ unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such CAIR SO₂ unit; or

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- (2) With regard to any general account, any person who has an ownership interest with respect to the CAIR SO₂ allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR SO₂ allowances.

Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the CAIR SO₂ Trading Program in accordance with subpart CCC of this part or, if no such agency has been so authorized, the Administrator.

Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

Receive or receipt of means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.

Recordation, record, or recorded means, with regard to CAIR SO₂ allowances, the movement of CAIR SO₂ allowances by the Administrator into or between CAIR SO₂ Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.

Replacement, replace, or replaced means, with regard to a unit, the demolishing of a unit, or the permanent shutdown and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or shutdown unit (the replaced unit).

Repowered means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

- (1) Atmospheric or pressurized fluidized bed combustion;
- (2) Integrated gasification combined cycle;
- (3) Magnetohydrodynamics;
- (4) Direct and indirect coal-fired turbines;
- (5) Integrated gasification fuel cells; or
- (6) As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (1) through (5) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

Serial number means, for a CAIR SO₂ allowance, the unique identification number assigned to each CAIR SO₂ allowance by the Administrator.

Sequential use of energy means:

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- (1) For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or
- (2) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

Solid waste incineration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a “solid waste incineration unit” as defined in section 129(g)(1) of the Clean Air Act.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the Clean Air Act, a “source,” including a “source” with multiple units, shall be considered a single “facility.”

State means one of the States or the District of Columbia that adopts the CAIR SO₂ Trading Program pursuant to § 51.124 (o)(1) or (2) of this chapter.

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

- (1) In person;
- (2) By United States Postal Service; or
- (3) By other means of dispatch or transmission and delivery. Compliance with any “submission” or “service” deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the Clean Air Act and part 70 or part 71 of this chapter.

Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.

Ton means 2,000 pounds. For the purpose of determining compliance with the CAIR SO₂ emissions limitation, total tons of sulfur dioxide emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with subpart HHH of this part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

Total energy output means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit. Unit means a stationary, fossil-fuel fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

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Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour or hour of unit operation means an hour in which a unit combusts any fuel.

Useful power means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:

- (1) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;
- (2) Used in a heating application (e.g., space heating or domestic hot water heating); or
- (3) Used in a space cooling application (i.e., thermal energy used by an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

§ 96.203 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

Btu—British thermal unit
CO₂—carbon dioxide
H₂O—water
Hg—mercury
hr—hour
kW—kilowatt electrical
kWh—kilowatt hour
lb—pound
mmBtu—million Btu
MWe—megawatt electrical
MWh—megawatt hour
NO_x—nitrogen oxides
O₂—oxygen
ppm—parts per million
scfh—standard cubic feet per hour
SO₂—sulfur dioxide
yr—year

§ 96.204 Applicability.

- (a) Except as provided in paragraph (b) of this section:
 - (1) The following units in a State shall be CAIR SO₂ units, and any source that includes one or more such units shall be a CAIR SO₂ source, subject to the requirements of this subpart and subparts BBB through HHH of this part: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

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- (2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR SO₂ unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR SO₂ unit as provided in paragraph (a)(1) of this section on the first date on which it both combusts fossil fuel and serves such generator.
- (b) The units in a State that meet the requirements set forth in paragraph (b)(1)(i), (b)(2)(i), or (b)(2)(ii) of this section shall not be CAIR SO₂ units:
 - (1) (i) Any unit that is a CAIR SO₂ unit under paragraph (a)(1) or (2) of this section:
 - (A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and
 - (B) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.
 - (ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR SO₂ unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.
- (2) (i) Any unit that is a CAIR SO₂ unit under paragraph (a)(1) or (2) of this section commencing operation before January 1, 1985:
 - (A) Qualifying as a solid waste incineration unit; and
 - (B) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).
- (ii) Any unit that is a CAIR SO₂ unit under paragraph (a)(1) or (2) of this section commencing operation on or after January 1, 1985:
 - (A) Qualifying as a solid waste incineration unit; and
 - (B) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).
- (iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (b)(2)(i) or (ii) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a

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CAIR SO₂ unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

§ 96.205 Retired unit exemption.

- (a)
 - (1) Any CAIR SO₂ unit that is permanently retired and is not a CAIR SO₂ opt-in unit under subpart III of this part shall be exempt from the CAIR SO₂ Trading Program, except for the provisions of this section, § 96.202, § 96.203, § 96.204, § 96.206(c)(4) through (7), § 96.207, and subparts BBB, FFF and GGG of this part.
 - (2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CAIR SO₂ unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR permit for the unit and shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit was permanently retired on a specific date and will comply with the requirements of paragraph (b) of this section.
 - (3) After receipt of the statement under paragraph (a)(2) of this section, the permitting authority will amend any permit under subpart CCC of this part covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (a)(1) and (b) of this section.
- (b) Special provisions.
 - (1) A unit exempt under paragraph (a) of this section shall not emit any sulfur dioxide, starting on the date that the exemption takes effect.
 - (2) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.
 - (3) The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CAIR SO₂ Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.
 - (4) A unit exempt under paragraph (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under § 96.222 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the unit resumes operation.
 - (5) On the earlier of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption:

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- (i) The date on which the CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(4) of this section;
 - (ii) The date on which the CAIR designated representative is required under paragraph (b)(4) of this section to submit a CAIR permit application for the unit; or
 - (iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.
- (6) For the purpose of applying monitoring, reporting, and recordkeeping requirements under subpart HHH of this part, a unit that loses its exemption under paragraph (a) of this section shall be treated as a unit that commences commercial operation on the first date on which the unit resumes operation.

§ 96.206 Standard requirements.

(a) Permit requirements.

- (1) The CAIR designated representative of each CAIR SO₂ source required to have a title V operating permit and each CAIR SO₂ unit required to have a title V operating permit at the source shall:
 - (i) Submit to the permitting authority a complete CAIR permit application under § 96.222 in accordance with the deadlines specified in § 96.221; and
 - (ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.
- (2) The owners and operators of each CAIR SO₂ source required to have a title V operating permit and each CAIR SO₂ unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority under subpart CCC of this part for the source and operate the source and the unit in compliance with such CAIR permit.
- (3) Except as provided in subpart III of this part, the owners and operators of a CAIR SO₂ source that is not otherwise required to have a title V operating permit and each CAIR SO₂ unit that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CCC of this part for such CAIR SO₂ source and such CAIR SO₂ unit.

(b) Monitoring, reporting, and recordkeeping requirements.

- (1) The owners and operators, and the CAIR designated representative, of each CAIR SO₂ source and each CAIR SO₂ unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subpart HHH of this part.
- (2) The emissions measurements recorded and reported in accordance with subpart HHH of this part shall be used to determine compliance by each CAIR SO₂ source with the CAIR SO₂ emissions limitation under paragraph (c) of this section.

(c) Sulfur dioxide emission requirements.

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- (1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR SO₂ source and each CAIR SO₂ unit at the source shall hold, in the source's compliance account, a tonnage equivalent in CAIR SO₂ allowances available for compliance deductions for the control period, as determined in accordance with § 96.254(a) and (b), not less than the tons of total sulfur dioxide emissions for the control period from all CAIR SO₂ units at the source, as determined in accordance with subpart HHH of this part.
 - (2) A CAIR SO₂ unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of January 1, 2010 or the deadline for meeting the unit's monitor certification requirements under § 96.270(b)(1),(2), or (5) and for each control period thereafter.
 - (3) A CAIR SO₂ allowance shall not be deducted, for compliance with the requirements under paragraph (c)(1) of this section, for a control period in a calendar year before the year for which the CAIR SO₂ allowance was allocated.
 - (4) CAIR SO₂ allowances shall be held in, deducted from, or transferred into or among CAIR SO₂ Allowance Tracking System accounts in accordance with subparts FFF and GGG of this part.
 - (5) A CAIR SO₂ allowance is a limited authorization to emit sulfur dioxide in accordance with the CAIR SO₂ Trading Program. No provision of the CAIR SO₂ Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 96.205 and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.
 - (6) A CAIR SO₂ allowance does not constitute a property right.
 - (7) Upon recordation by the Administrator under subpart FFF, GGG, or III of this part, every allocation, transfer, or deduction of a CAIR SO₂ allowance to or from a CAIR SO₂ source's compliance account is incorporated automatically in any CAIR permit of the source.
- (d) Excess emissions requirements—
- (1) The owners and operators of the source and each CAIR SO₂ unit at the source shall surrender the CAIR SO₂ allowances required for deduction under § 96.254(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and
 - (2) Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.
- (e) Recordkeeping and reporting requirements.
- (1) Unless otherwise provided, the owners and operators of the CAIR SO₂ source and each CAIR SO₂ unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the permitting authority or the Administrator.
 - (i) The certificate of representation under § 96.213 for the CAIR designated representative for the source and each CAIR SO₂ unit at the source and all

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documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under § 96.213 changing the CAIR designated representative.

- (ii) All emissions monitoring information, in accordance with subpart HHH of this part, provided that to the extent that subpart HHH of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.
 - (iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR SO₂ Trading Program.
 - (iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR SO₂ Trading Program or to demonstrate compliance with the requirements of the CAIR SO₂ Trading Program.
 - (2) The CAIR designated representative of a CAIR SO₂ source and each CAIR SO₂ unit at the source shall submit the reports required under the CAIR SO₂ Trading Program, including those under subpart HHH of this part.
- (f) Liability.
- (1) Each CAIR SO₂ source and each CAIR SO₂ unit shall meet the requirements of the CAIR SO₂ Trading Program.
 - (2) Any provision of the CAIR SO₂ Trading Program that applies to a CAIR SO₂ source or the CAIR designated representative of a CAIR SO₂ source shall also apply to the owners and operators of such source and of the CAIR SO₂ units at the source.
 - (3) Any provision of the CAIR SO₂ Trading Program that applies to a CAIR SO₂ unit or the CAIR designated representative of a CAIR SO₂ unit shall also apply to the owners and operators of such unit.
- (g) Effect on other authorities. No provision of the CAIR SO₂ Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 96.205 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR SO₂ source or CAIR SO₂ unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 96.207 Computation of time.

- (a) Unless otherwise stated, any time period scheduled, under the CAIR SO₂ Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.
- (b) Unless otherwise stated, any time period scheduled, under the CAIR SO₂ Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.
- (c) Unless otherwise stated, if the final day of any time period, under the CAIR SO₂ Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

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§ 96.208 Appeal procedures.

The appeal procedures for decisions of the Administrator under the CAIR SO₂ Trading Program are set forth in part 78 of this chapter.

Subpart BBB—CAIR Designated Representative for CAIR SO₂ Sources

§ 96.210 Authorization and responsibilities of CAIR designated representative.

- (a) Except as provided under § 96.211, each CAIR SO₂ source, including all CAIR SO₂ units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR SO₂ Trading Program concerning the source or any CAIR SO₂ unit at the source.
- (b) The CAIR designated representative of the CAIR SO₂ source shall be selected by an agreement binding on the owners and operators of the source and all CAIR SO₂ units at the source and shall act in accordance with the certification statement in § 96.213(a)(4)(iv).
- (c) Upon receipt by the Administrator of a complete certificate of representation under § 96.213, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR SO₂ source represented and each CAIR SO₂ unit at the source in all matters pertaining to the CAIR SO₂ Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.
- (d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR SO₂ Allowance Tracking System account will be established for a CAIR SO₂ unit at a source, until the Administrator has received a complete certificate of representation under § 96.213 for a CAIR designated representative of the source and the CAIR SO₂ units at the source.
- (e)
 - (1) Each submission under the CAIR SO₂ Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR SO₂ source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."
 - (2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a CAIR SO₂ source or a CAIR SO₂ unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 96.211 Alternate CAIR designated representative.

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- (a) A certificate of representation under § 96.213 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.
- (b) Upon receipt by the Administrator of a complete certificate of representation under § 96.213, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.
- (c) Except in this section and §§ 96.202, 96.210(a) and (d), 96.212, 96.213, 96.215, 96.251, and 96.282, whenever the term “CAIR designated representative” is used in subparts AAA through III of this part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

§ 96.212 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

- (a) Changing CAIR designated representative. The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.213. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR SO₂ source and the CAIR SO₂ units at the source.
- (b) Changing alternate CAIR designated representative. The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.213. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR SO₂ source and the CAIR SO₂ units at the source.
- (c) Changes in owners and operators.
 - (1) In the event an owner or operator of a CAIR SO₂ source or a CAIR SO₂ unit is not included in the list of owners and operators in the certificate of representation under § 96.213, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the permitting authority, the Administrator, or a court, as if the owner or operator were included in such list.
 - (2) Within 30 days following any change in the owners and operators of a CAIR SO₂ source or a CAIR SO₂ unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under § 96.213 amending the list of owners and operators to include the change.

§ 96.213 Certificate of representation.

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- (a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the Administrator:
- (1) Identification of the CAIR SO₂ source, and each CAIR SO₂ unit at the source, for which the certificate of representation is submitted, including identification and nameplate capacity of each generator served by each such unit.
 - (2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR designated representative and any alternate CAIR designated representative.
 - (3) A list of the owners and operators of the CAIR SO₂ source and of each CAIR SO₂ unit at the source.
 - (4) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative—
 - (i) “I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR SO₂ unit at the source.”
 - (ii) “I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR SO₂ Trading Program on behalf of the owners and operators of the source and of each CAIR SO₂ unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions.”
 - (iii) “I certify that the owners and operators of the source and of each CAIR SO₂ unit at the source shall be bound by any order issued to me by the Administrator, the permitting authority, or a court regarding the source or unit.”
 - (iv) “Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR SO₂ unit, or where a utility or industrial customer purchases power from a CAIR SO₂ unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the ‘CAIR designated representative’ or ‘alternate CAIR designated representative’, as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR SO₂ unit at the source; and CAIR SO₂ allowances and proceeds of transactions involving CAIR SO₂ allowances will be deemed to be held or distributed in proportion to each holder’s legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR SO₂ allowances by contract, CAIR SO₂ allowances and proceeds of transactions involving CAIR SO₂ allowances will be deemed to be held or distributed in accordance with the contract.”
 - (5) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.
- (b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

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§ 96.214 Objections concerning CAIR designated representative.

- (a) Once a complete certificate of representation under § 96.213 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 96.213 is received by the Administrator.
- (b) Except as provided in § 96.212(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR SO₂ Trading Program.
- (c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR SO₂ allowance transfers.

§ 96.215 Delegation by CAIR designated representative and alternate CAIR designated representative.

- (a) A CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.
- (b) An alternate CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.
- (c) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the CAIR designated representative or alternate CAIR designated representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator that includes the following elements:
 - (1) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR designated representative or alternate CAIR designated representative;
 - (2) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person “referred to as an “agent””;
 - (3) For each such natural person, a list of the type or types of electronic submissions under paragraph (a) or (b) of this section for which authority is delegated to him or her; and
 - (4) The following certification statements by such CAIR designated representative or alternate CAIR designated representative:
 - (i) “I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR designated representative or alternate CAIR designated representative, as appropriate, and before this notice of

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delegation is superseded by another notice of delegation under 40 CFR 96.215(d) shall be deemed to be an electronic submission by me.”

- (ii) “Until this notice of delegation is superseded by another notice of delegation under 40 CFR 96.215(d), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 96.215 is terminated.”
- (d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the CAIR designated representative or alternate CAIR designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR designated representative or alternate CAIR designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.
- (e) Any electronic submission covered by the certification in paragraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under paragraph (d) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

Subpart CCC—Permits

§ 96.220 General CAIR SO₂ Trading Program permit requirements.

- (a) For each CAIR SO₂ source required to have a title V operating permit or required, under subpart III of this part, to have a title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the title V permit or other federally enforceable permit as applicable shall be administered in accordance with the permitting authority’s title V operating permits regulations promulgated under part 70 or 71 of this chapter or the permitting authority’s regulations for other federally enforceable permits as applicable, except as provided otherwise by §96.205, this subpart, and subpart III of this part.
- (b) Each CAIR permit shall contain, with regard to the CAIR SO₂ source and the CAIR SO₂ units at the source covered by the CAIR permit, all applicable CAIR SO₂ Trading Program, CAIR NO_x Annual Trading Program, and CAIR NO_x Ozone Season Trading Program requirements and shall be a complete and separable portion of the title V operating permit or other federally enforceable permit under paragraph (a) of this section.

§ 96.221 Submission of CAIR permit applications.

- (a) Duty to apply. The CAIR designated representative of any CAIR SO₂ source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under §96.222 for the source covering each CAIR SO₂ unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the CAIR SO₂ unit commences commercial operation.
- (b) Duty to Reapply. For a CAIR SO₂ source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 96.222 for the source covering each CAIR SO₂ unit at the source to renew the CAIR permit in accordance with the permitting authority’s title V operating permits regulations addressing permit renewal, except as provided in §96.283(b).

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§ 96.222 Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the following elements concerning the CAIR SO₂ source for which the application is submitted, in a format prescribed by the permitting authority:

- (a) Identification of the CAIR SO₂ source;
- (b) Identification of each CAIR SO₂ unit at the CAIR SO₂ source; and
- (c) The standard requirements under § 96.206.

§ 96.223 CAIR permit contents and term.

- (a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all elements required for a complete CAIR permit application under § 96.222.
- (b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under §96.202 and, upon recordation by the Administrator under subpart FFF, GGG, or III of this part, every allocation, transfer, or deduction of a CAIR SO₂ allowance to or from the compliance account of the CAIR SO₂ source covered by the permit.
- (c) The term of the CAIR permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR SO₂ source's title V operating permit or other federally enforceable permit as applicable.

§ 96.224 CAIR permit revisions.

Except as provided in § 96.223(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations or the permitting authority's regulations for other federally enforceable permits as applicable addressing permit revisions.

Subparts DDD—EEE [Reserved]

Subpart FFF—CAIR SO₂ Allowance Tracking System

§ 96.250 [Reserved]

§ 96.251 Establishment of accounts.

- (a) Compliance accounts. Except as provided in § 96.284(e), upon receipt of a complete certificate of representation under § 96.213, the Administrator will establish a compliance account for the CAIR SO₂ source for which the certificate of representation was submitted, unless the source already has a compliance account.
- (b) General accounts—
 - (1) Application for general account.
 - (i) Any person may apply to open a general account for the purpose of holding and transferring CAIR SO₂ allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and

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only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.

- (ii) A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:
 - (A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR authorized account representative and any alternate CAIR authorized account representative;
 - (B) Organization name and type of organization, if applicable;
 - (C) A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR SO₂ allowances held in the general account;
 - (D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: "I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR SO₂ allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR SO₂ Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account."
 - (E) The signature of the CAIR authorized account representative and any alternate CAIR authorized account representative and the dates signed.
- (iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.
- (2) Authorization of CAIR authorized account representative or alternate CAIR authorized account representative.
 - (i) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:
 - (A) The Administrator will establish a general account for the person or persons for whom the application is submitted.
 - (B) The CAIR authorized account representative and any alternate CAIR authorized account representative for the general account shall represent

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and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR SO₂ allowances held in the general account in all matters pertaining to the CAIR SO₂ Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account.

- (C) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.
- (ii) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR SO₂ allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: “I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR SO₂ allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”
- (iii) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(ii) of this section.
- (3) Changing CAIR authorized account representative and alternate CAIR authorized account representative; changes in persons with ownership interest.
 - (i) The CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR SO₂ allowances in the general account.
 - (ii) The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding

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complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR SO₂ allowances in the general account.

- (iii)
 - (A) In the event a person having an ownership interest with respect to CAIR SO₂ allowances in the general account is not included in the list of such persons in the application for a general account, such person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR authorized account representative and any alternate CAIR authorized account representative of the account, and the decisions and orders of the Administrator or a court, as if the person were included in such list.
 - (B) Within 30 days following any change in the persons having an ownership interest with respect to CAIR SO₂ allowances in the general account, including the addition of a new person, the CAIR authorized account representative or any alternate CAIR authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR SO₂ allowances in the general account to include the change.
- (4) Objections concerning CAIR authorized account representative or alternate CAIR authorized account representative.
 - (i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.
 - (ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative or the finality of any decision or order by the Administrator under the CAIR SO₂ Trading Program.
 - (iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR SO₂ allowance transfers.
- (5) Delegation by CAIR authorized account representative and alternate CAIR authorized account representative.

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- (i) A CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FFF and GGG of this part.
- (ii) An alternate CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FFF and GGG of this part.
- (iii) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (b)(5)(i) or (ii) of this section, the CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:
 - (A) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR authorized account representative or alternate CAIR authorized account representative;
 - (B) The name, address, e-mail address, telephone number, and, facsimile transmission number (if any) of each such natural person (referred to as an “agent”);
 - (C) For each such natural person, a list of the type or types of electronic submissions under paragraph (b)(5)(i) or (ii) of this section for which authority is delegated to him or her;
 - (D) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: “I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR authorized account representative or alternate CAIR authorized representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 96.251(b)(5)(iv) shall be deemed to be an electronic submission by me.”; and
 - (E) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: “Until this notice of delegation is superseded by another notice of delegation under 40 CFR 96.251 (b)(5)(iv), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 96.251 (b)(5) is terminated.”
- (iv) A notice of delegation submitted under paragraph (b)(5)(iii) of this section shall be effective, with regard to the CAIR authorized account representative or alternate CAIR authorized account representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

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- (v) Any electronic submission covered by the certification in paragraph (b)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (b)(5)(iv) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.
- (c) Account identification. The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

§ 96.252 Responsibilities of CAIR authorized account representative.

Following the establishment of a CAIR SO₂ Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR SO₂ allowances in the account, shall be made only by the CAIR authorized account representative for the account.

§ 96.253 Recordation of CAIR SO₂ allowances.

- (a) (1) After a compliance account is established under § 96.251(a) or § 73.31(a) or (b) of this chapter, the Administrator will record in the compliance account any CAIR SO₂ allowance allocated to any CAIR SO₂ unit at the source for each of the 30 years starting the later of 2010 or the year in which the compliance account is established and any CAIR SO₂ allowance allocated for each of the 30 years starting the later of 2010 or the year in which the compliance account is established and transferred to the source in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.
- (2) In 2011 and each year thereafter, after Administrator has completed all deductions under § 96.254(b), the Administrator will record in the compliance account any CAIR SO₂ allowance allocated to any CAIR SO₂ unit at the source for the new 30th year (i.e., the year that is 30 years after the calendar year for which such deductions are or could be made) and any CAIR SO₂ allowance allocated for the new 30th year and transferred to the source in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.
- (b) (1) After a general account is established under § 96.251(b) or § 73.31(c) of this chapter, the Administrator will record in the general account any CAIR SO₂ allowance allocated for each of the 30 years starting the later of 2010 or the year in which the general account is established and transferred to the general account in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.
- (2) In 2011 and each year thereafter, after Administrator has completed all deductions under § 96.254(b), the Administrator will record in the general account any CAIR SO₂ allowance allocated for the new 30th year (i.e., the year that is 30 years after the calendar year for which such deductions are or could be made) and transferred to the general account in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.
- (c) Serial numbers for allocated CAIR SO₂ allowances. When recording the allocation of CAIR SO₂ allowances issued by a permitting authority under § 96.288, the Administrator will assign each such CAIR SO₂ allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR SO₂ allowance is allocated.

§ 96.254 Compliance with CAIR SO₂ emissions limitation.

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- (a) Allowance transfer deadline. The CAIR SO₂ allowances are available to be deducted for compliance with a source's CAIR SO₂ emissions limitation for a control period in a given calendar year only if the CAIR SO₂ allowances:
 - (1) Were allocated for the control period in the year or a prior year; and
 - (2) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR SO₂ allowance transfer correctly submitted for recordation under §96.260 and §96.261 by the allowance transfer deadline for the control period; and
- (b) Deductions for compliance. Following the recordation, in accordance with § 96.261, of CAIR SO₂ allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR SO₂ allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR SO₂ emissions limitation for the control period as follows:
 - (1) For a CAIR SO₂ source subject to an Acid Rain emissions limitation, the Administrator will, in the following order:
 - (i) Deduct the amount of CAIR SO₂ allowances, available under paragraph (a) of this section and not issued by a permitting authority under § 96.288, that is required under §§ 73.35(b) and (c) of this part. If there are sufficient CAIR SO₂ allowances to complete this deduction, the deduction will be treated as satisfying the requirements of §§ 73.35(b) and (c) of this chapter.
 - (ii) Deduct the amount of CAIR SO₂ allowances, not issued by a permitting authority under § 96.288, that is required under §§ 73.35(d) and 77.5 of this part. If there are sufficient CAIR SO₂ allowances to complete this deduction, the deduction will be treated as satisfying the requirements of §§ 73.35(d) and 77.5 of this chapter.
 - (iii) Treating the CAIR SO₂ allowances deducted under paragraph (b)(1)(i) of this section as also being deducted under this paragraph (b)(1)(iii), deduct CAIR SO₂ allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 96.288) in order to determine whether the source meets the CAIR SO₂ emissions limitation for the control period, as follows:
 - (A) Until the tonnage equivalent of the CAIR SO₂ allowances deducted equals, or exceeds in accordance with paragraphs (c)(1) and (2) of this section, the number of tons of total sulfur dioxide emissions, determined in accordance with subpart HHH of this part, from all CAIR SO₂ units at the source for the control period; or
 - (B) If there are insufficient CAIR SO₂ allowances to complete the deductions in paragraph (b)(1)(iii)(A) of this section, until no more CAIR SO₂ allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 96.288) remain in the compliance account.
 - (2) For a CAIR SO₂ source not subject to an Acid Rain emissions limitation, the Administrator will deduct CAIR SO₂ allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 96.288) in order to determine whether the source meets the CAIR SO₂ emissions limitation for the control period, as follows:

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- (i) Until the tonnage equivalent of the CAIR SO₂ allowances deducted equals, or exceeds in accordance with paragraphs (c)(1) and (2) of this section, the number of tons of total sulfur dioxide emissions, determined in accordance with subpart HHH of this part, from all CAIR SO₂ units at the source for the control period; or
 - (ii) If there are insufficient CAIR SO₂ allowances to complete the deductions in paragraph (b)(2)(i) of this section, until no more CAIR SO₂ allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 96.288) remain in the compliance account.
- (c)
 - (1) Identification of CAIR SO₂ allowances by serial number. The CAIR authorized account representative for a source's compliance account may request that specific CAIR SO₂ allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the CAIR SO₂ source and the appropriate serial numbers.
 - (2) First-in, first-out. The Administrator will deduct CAIR SO₂ allowances under paragraph (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR SO₂ allowances by serial number under paragraph (c)(1) of this section, on a first-in, first-out (FIFO) accounting basis in the following order:
 - (i) Any CAIR SO₂ allowances that were allocated to the units at the source for a control period before 2010, in the order of recordation;
 - (ii) Any CAIR SO₂ allowances that were allocated to any entity for a control period before 2010 and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, in the order of recordation;
 - (iii) Any CAIR SO₂ allowances that were allocated to the units at the source for a control period during 2010 through 2014, in the order of recordation;
 - (iv) Any CAIR SO₂ allowances that were allocated to any entity for a control period during 2010 through 2014 and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, in the order of recordation;
 - (v) Any CAIR SO₂ allowances that were allocated to the units at the source for a control period in 2015 or later, in the order of recordation; and
 - (vi) Any CAIR SO₂ allowances that were allocated to any entity for a control period in 2015 or later and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, in the order of recordation.
 - (d) Deductions for excess emissions.

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- (1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the CAIR SO₂ source has excess emissions, the Administrator will deduct from the source's compliance account the tonnage equivalent in CAIR SO₂ allowances, allocated for the control period in the immediately following calendar year (including any issued by a permitting authority under §96.288), equal to, or exceeding in accordance with paragraphs (c)(1) and (2) of this section, 3 times the following amount: the number of tons of the source's excess emissions minus, if the source is subject to an Acid Rain emissions limitation, the amount of the CAIR SO₂ allowances required to be deducted under paragraph (b)(1)(ii) of this section.
 - (2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the CAIR SO₂ source or the CAIR SO₂ units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or applicable State law.
- (e) Recordation of deductions. The Administrator will record in the appropriate compliance account all deductions from such an account under paragraph (b) or (d) of this section and subpart III.
- (f) Administrator's action on submissions.
- (1) The Administrator may review and conduct independent audits concerning any submission under the CAIR SO₂ Trading Program and make appropriate adjustments of the information in the submissions.
 - (2) The Administrator may deduct CAIR SO₂ allowances from or transfer CAIR SO₂ allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section, and record such deductions and transfers.

§ 96.255 Banking.

- (a) CAIR SO₂ allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.
- (b) Any CAIR SO₂ allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR SO₂ allowance is deducted or transferred under § 96.254, § 96.256, or subpart GGG or III of this part.

§ 96.256 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR SO₂ Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR authorized account representative for the account.

§ 96.257 Closing of general accounts.

- (a) The CAIR authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under §§96.260 and 96.261 for any CAIR SO₂ allowances in the account to one or more other CAIR SO₂ Allowance Tracking System accounts.
- (b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR SO₂ allowances, the Administrator may notify the CAIR

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authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR SO₂ allowances into the account under § 96.260 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart GGG—CAIR SO₂ Allowance Transfers

§ 96.260 Submission of CAIR SO₂ allowance transfers.

- (a) A CAIR authorized account representative seeking recordation of a CAIR SO₂ allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR SO₂ allowance transfer shall include the following elements, in a format specified by the Administrator:
 - (1) The account numbers of both the transferor and transferee accounts;
 - (2) The serial number of each CAIR SO₂ allowance that is in the transferor account and is to be transferred; and
 - (3) The name and signature of the CAIR authorized account representatives of the transferor and transferee accounts and the dates signed.
- (b)
 - (1) The CAIR authorized account representative for the transferee account can meet the requirements in paragraph (a)(3) of this section by submitting, in a format prescribed by the Administrator, a statement signed by the CAIR authorized account representative and identifying each account into which any transfer of allowances, submitted on or after the date on which the Administrator receives such statement, is authorized. Such authorization shall be binding on any CAIR authorized account representative for such account and shall apply to all transfers into the account that are submitted on or after such date of receipt, unless and until the Administrator receives a statement signed by the CAIR authorized account representative retracting the authorization for the account.
 - (2) The statement under paragraph (b)(1) of this section shall include the following: “By this signature I authorize any transfer of allowances into each account listed herein, except that I do not waive any remedies under State or Federal law to obtain correction of any erroneous transfers into such accounts. This authorization shall be binding on any CAIR authorized account representative for such account unless and until a statement signed by the CAIR authorized account representative retracting this authorization for the account is received by the Administrator.”

§ 96.261 EPA recordation.

- (a) Within 5 business days (except as necessary to perform a transfer in perpetuity of CAIR SO₂ allowances allocated to a CAIR SO₂ unit or as provided in paragraph (b) of this section) of receiving a CAIR SO₂ allowance transfer, the Administrator will record a CAIR SO₂ allowance transfer by moving each CAIR SO₂ allowance from the transferor account to the transferee account as specified by the request, provided that:
 - (1) The transfer is correctly submitted under § 96.260;
 - (2) The transferor account includes each CAIR SO₂ allowance identified by serial number in the transfer; and

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- (3) The transfer is in accordance with the limitation on transfer under §74.42 of this chapter and §74.47(c) of this chapter, as applicable.
- (b) A CAIR SO₂ allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR SO₂ allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 96.254 for the control period immediately before such allowance transfer deadline.
- (c) Where a CAIR SO₂ allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 96.262 Notification.

- (a) Notification of recordation. Within 5 business days of recordation of a CAIR SO₂ allowance transfer under § 96.261, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.
- (b) Notification of non-recordation. Within 10 business days of receipt of a CAIR SO₂ allowance transfer that fails to meet the requirements of § 96.261(a), the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:
 - (1) A decision not to record the transfer, and
 - (2) The reasons for such non-recordation.
- (c) Nothing in this section shall preclude the submission of a CAIR SO₂ allowance transfer for recordation following notification of non-recordation.

Subpart HHH—Monitoring and Reporting

§ 96.270 General requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR SO₂ unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subparts F and G of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 96.202 and in § 72.2 of this chapter shall apply, and the terms “affected unit,” “designated representative,” and “continuous emission monitoring system” (or “CEMS”) in part 75 of this chapter shall be deemed to refer to the terms “CAIR SO₂ unit,” “CAIR designated representative,” and “continuous emission monitoring system” (or “CEMS”) respectively, as defined in § 96.202. The owner or operator of a unit that is not a CAIR SO₂ unit but that is monitored under § 75.16(b)(2) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR SO₂ unit.

- (a) Requirements for installation, certification, and data accounting. The owner or operator of each CAIR SO₂ unit shall:
 - (1) Install all monitoring systems required under this subpart for monitoring SO₂ mass emissions and individual unit heat input (including all systems required to monitor SO₂ concentration, stack gas moisture content, stack gas flow rate, CO₂ or O₂ concentration, and fuel flow rate, as applicable, in accordance with §§ 75.11 and 75.16 of this chapter);

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- (2) Successfully complete all certification tests required under § 96.271 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and
 - (3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.
- (b) Compliance deadlines. Except as provided in paragraph (e) of this section, the owner or operator shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the following dates.
 - (1) For the owner or operator of a CAIR SO₂ unit that commences commercial operation before July 1, 2008, by January 1, 2009.
 - (2) For the owner or operator of a CAIR SO₂ unit that commences commercial operation on or after July 1, 2008, by the later of the following dates:
 - (i) January 1, 2009; or
 - (ii) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation.
 - (3) For the owner or operator of a CAIR SO₂ unit for which construction of a new stack or flue or installation of add-on SO₂ emission controls is completed after the applicable deadline under paragraph (b)(1), (2), (4), or (5) of this section, by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on SO₂ emissions controls.
 - (4) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, by the date specified in § 96.284(b).
 - (5) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a CAIR SO₂ opt-in unit under subpart III of this part, by the date on which the CAIR SO₂ opt-in unit enters the CAIR SO₂ Trading Program as provided in § 96.284(g).
- (c) Reporting data. The owner or operator of a CAIR SO₂ unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for SO₂ concentration, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine SO₂ mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter or section 2.4 of appendix D to part 75 of this chapter, as applicable.
- (d) Prohibitions.
 - (1) No owner or operator of a CAIR SO₂ unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 96.275.

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- (2) No owner or operator of a CAIR SO₂ unit shall operate the unit so as to discharge, or allow to be discharged, SO₂ emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.
- (3) No owner or operator of a CAIR SO₂ unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording SO₂ mass emissions discharged into the atmosphere or heat input, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.
- (4) No owner or operator of a CAIR SO₂ unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:
 - (i) During the period that the unit is covered by an exemption under § 96.205 that is in effect;
 - (ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or
 - (iii) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with §96.271(d)(3)(i).
- (e) Long-term cold storage. The owner or operator of a CAIR SO₂ unit is subject to the applicable provisions of part 75 of this chapter concerning units in long-term cold storage.

§ 96.271 Initial certification and recertification procedures.

- (a) The owner or operator of a CAIR SO₂ unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 96.270(a)(1) if the following conditions are met:
 - (1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and
 - (2) The applicable quality-assurance and quality-control requirements of § 75.21 of this chapter and appendix B and appendix D to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.
- (b) The recertification provisions of this section shall apply to a monitoring system under § 96.270(a)(1) exempt from initial certification requirements under paragraph (a) of this section.
- (c) [Reserved]
- (d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR SO₂ unit shall comply with the following initial certification and recertification procedures, for a continuous

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monitoring system (i.e., a continuous emission monitoring system and an excepted monitoring system under appendix D to part 75 of this chapter) under § 96.270(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

- (1) Requirements for initial certification. The owner or operator shall ensure that each continuous monitoring system under § 96.270(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 96.270(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.
- (2) Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 96.270(a)(1) that may significantly affect the ability of the system to accurately measure or record SO₂ mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include: Replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flow meter system under § 96.270(a)(1) is subject to the recertification requirements in § 75.20(g)(6) of this chapter.
- (3) Approval process for initial certification and recertification. Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under § 96.270(a)(1). For recertifications, replace the words "certification" and "initial certification" with the word "recertification", replace the word "certified" with the word "recertified," and follow the procedures in §§ 75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.
 - (i) Notification of certification. The CAIR designated representative shall submit to the permitting authority, the appropriate EPA Regional Office, and the Administrator written notice of the dates of certification testing, in accordance with § 96.273.
 - (ii) Certification application. The CAIR designated representative shall submit to the permitting authority a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.
 - (iii) Provisional certification date. The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CAIR SO₂ Trading Program for a period not to exceed 120 days after receipt by the permitting authority

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of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the permitting authority does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the permitting authority.

- (iv) Certification application approval process. The permitting authority will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CAIR SO₂ Trading Program.
 - (A) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.
 - (B) Incomplete application notice. If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section. The 120-day review period shall not begin before receipt of a complete certification application.
 - (C) Disapproval notice. If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.
 - (D) Audit decertification. The permitting authority or, for a CAIR SO₂ opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 96.272(b).

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- (v) Procedures for loss of certification. If the permitting authority or the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:
 - (A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:
 - (1) For a disapproved SO₂ pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of SO₂ and the maximum potential flow rate, as defined in sections 2.1.1.1 and 2.1.4.1 of appendix A to part 75 of this chapter.
 - (2) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO₂ concentration or the minimum potential O₂ concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.
 - (3) For a disapproved fuel flow meter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.
 - (B) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.
 - (C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the permitting authority's or the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.
- (e) Initial certification and recertification procedures for units using the low mass emission excepted methodology under § 75.19 of this chapter. The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flow meter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.
- (f) Certification/recertification procedures for alternative monitoring systems. The CAIR designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator and, if applicable, the permitting authority under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of § 75.20(f) of this chapter.

§ 96.272 Out of control periods.

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- (a) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable missing data procedures in subpart D of or appendix D to part 75 of this chapter.
- (b) Audit decertification. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 96.271 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the permitting authority or, for a CAIR SO₂ opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the permitting authority or the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 96.271 for each disapproved monitoring system.

§ 96.273 Notifications.

The CAIR designated representative for a CAIR SO₂ unit shall submit written notice to the permitting authority and the Administrator in accordance with § 75.61 of this chapter.

§ 96.274 Recordkeeping and reporting.

- (a) General provisions. The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements in subparts F and G of part 75 of this chapter, and the requirements of § 96.210(e)(1).
- (b) Monitoring plans. The owner or operator of a CAIR SO₂ unit shall comply with requirements of § 75.62 of this chapter and, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, §§ 96.283 and 96.284(a).
- (c) Certification applications. The CAIR designated representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under § 96.271, including the information required under § 75.63 of this chapter.
- (d) Quarterly reports. The CAIR designated representative shall submit quarterly reports, as follows:
 - (1) The CAIR designated representative shall report the SO₂ mass emissions data and heat input data for the CAIR SO₂ unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:
 - (i) For a unit that commences commercial operation before July 1, 2008, the calendar quarter covering January 1, 2009 through March 31, 2009;

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- (ii) For a unit that commences commercial operation on or after July 1, 2008, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 96.270(b), unless that quarter is the third or fourth quarter of 2008, in which case reporting shall commence in the quarter covering January 1, 2009 through March 31, 2009;
 - (iii) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the calendar quarter corresponding to the date specified in § 96.284(b); and
 - (iv) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a CAIR SO₂ opt-in unit under subpart III of this part, the calendar quarter corresponding to the date on which the CAIR SO₂ opt-in unit enters the CAIR SO₂ Trading Program as provided in §96.284(g).
- (2) The CAIR designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.64 of this chapter.
 - (3) For CAIR SO₂ units that are also subject to an Acid Rain emissions limitation or the CAIR NO_x Annual Trading Program or CAIR NO_x Ozone Season Trading Program, or Hg Budget Trading Program, quarterly reports shall include the applicable data and information required by subparts F through I of part 75 of this chapter as applicable, in addition to the SO₂ mass emission data, heat input data, and other information required by this subpart.
- (e) Compliance certification. The CAIR designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:
 - (1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications; and
 - (2) For a unit with add-on SO₂ emission controls and for all hours where SO₂ data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate SO₂ emissions.

§ 96.275 Petitions.

- (a) The CAIR designated representative of a CAIR SO₂ unit that is subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.
- (b) The CAIR designated representative of a CAIR SO₂ unit that is not subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting

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authority and the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by both the permitting authority and the Administrator.

Subpart III—CAIR SO₂ Opt-in Units

§ 96.280 Applicability.

A CAIR SO₂ opt-in unit must be a unit that:

- (a) Is located in the State;
- (b) Is not a CAIR SO₂ unit under § 96.204 and is not covered by a retired unit exemption under § 96.205 that is in effect;
- (c) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect and is not an opt-in source under part 74 of this chapter;
- (d) Has or is required or qualified to have a title V operating permit or other federally enforceable permit; and
- (e) Vents all of its emissions to a stack and can meet the monitoring, recordkeeping, and reporting requirements of subpart HHH of this part.

§ 96.281 General.

- (a) Except as otherwise provided in §§ 96.201 through 96.204, §§ 96.206 through 96.208, and subparts BBB and CCC and subparts FFF through HHH of this part, a CAIR SO₂ opt-in unit shall be treated as a CAIR SO₂ unit for purposes of applying such sections and subparts of this part.
- (b) Solely for purposes of applying, as provided in this subpart, the requirements of subpart HHH of this part to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, such unit shall be treated as a CAIR SO₂ unit before issuance of a CAIR opt-in permit for such unit.

§ 96.282 CAIR designated representative.

Any CAIR SO₂ opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, located at the same source as one or more CAIR SO₂ units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR SO₂ units.

§ 96.283 Applying for CAIR opt-in permit.

- (a) Applying for initial CAIR opt-in permit. The CAIR designated representative of a unit meeting the requirements for a CAIR SO₂ opt-in unit in § 96.280 may apply for an initial CAIR opt-in permit at any time, except as provided under § 96.286(f) and (g), and, in order to apply, must submit the following:
 - (1) A complete CAIR permit application under § 96.222;

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- (2) A certification, in a format specified by the permitting authority, that the unit:
 - (i) Is not a CAIR SO₂ unit under § 96.204 and is not covered by a retired unit exemption under § 96.205 that is in effect;
 - (ii) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;
 - (iii) Is not and, so long as the unit is a CAIR SO₂ opt-in unit, will not become, an opt-in source under part 74 of this chapter;
 - (iv) Vents all of its emissions to a stack; and
 - (v) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 96.222;
 - (3) A monitoring plan in accordance with subpart HHH of this part;
 - (4) A complete certificate of representation under § 96.213 consistent with § 96.282, if no CAIR designated representative has been previously designated for the source that includes the unit; and
 - (5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR SO₂ allowances under §96.288(b) or §96.288(c) (subject to the conditions in §§96.284(h) and 96.286(g)). If allocation under §96.288(c) is requested, this statement shall include a statement that the owners and operators of the unit intend to repower the unit before January 1, 2015 and that they will provide, upon request, documentation demonstrating such intent.
- (b) Duty to reapply.
- (1) The CAIR designated representative of a CAIR SO₂ opt-in unit shall submit a complete CAIR permit application under § 96.222 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or the permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.
 - (2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR SO₂ opt-in unit from the CAIR SO₂ Trading Program in accordance with § 96.286 or the unit becomes a CAIR SO₂ unit under § 96.204, the CAIR SO₂ opt-in unit shall remain subject to the requirements for a CAIR SO₂ opt-in unit, even if the CAIR designated representative for the CAIR SO₂ opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

§ 96.284 Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under § 96.283 is submitted in accordance with the following:

- (a) Interim review of monitoring plan. The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application

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for a CAIR opt-in permit under § 96.283. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the SO₂ emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with subpart HHH of this part. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

(b) Monitoring and reporting.

- (1) (i) If the permitting authority and the Administrator determine that the monitoring plan is sufficient under paragraph (a) of this section, the owner or operator shall monitor and report the SO₂ emissions rate and the heat input of the unit and all other applicable parameters, in accordance with subpart HHH of this part, starting on the date of certification of the appropriate monitoring systems under subpart HHH of this part and continuing until a CAIR opt-in permit is denied under § 96.284(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR SO₂ Trading Program in accordance with § 96.286.
- (ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the CAIR SO₂ Trading Program under §96.284(g), during which period monitoring system availability must not be less than 90 percent under subpart HHH of this part and the unit must be in full compliance with any applicable State or Federal emissions or emissions-related requirements.
- (2) To the extent the SO₂ emissions rate and the heat input of the unit are monitored and reported in accordance with subpart HHH of this part for one or more control periods, in addition to the control period under paragraph (b)(1)(ii) of this section, during which control periods monitoring system availability is not less than 90 percent under subpart HHH of this part and the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements and which control periods begin not more than 3 years before the unit enters the CAIR SO₂ Trading Program under § 96.284(g), such information shall be used as provided in paragraphs (c) and (d) of this section.

(c) Baseline heat input. The unit's baseline heat rate shall equal:

- (1) If the unit's SO₂ emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's total heat input (in mmBtu) for the control period; or
- (2) If the unit's SO₂ emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, the average of the amounts of the unit's total heat input (in mmBtu) for the control period under paragraphs (b)(1)(ii) and (b)(2) of this section.

(d) Baseline SO₂ emission rate. The unit's baseline SO₂ emission rate shall equal:

- (1) If the unit's SO₂ emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's SO₂ emissions rate (in lb/mmBtu) for the control period;
- (2) If the unit's SO₂ emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the

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unit does not have add-on SO₂ emission controls during any such control periods, the average of the amounts of the unit's SO₂ emissions rate (in lb/mmBtu) for the control period under paragraphs (b)(1)(ii) and (b)(2) of this section; or

- (3) If the unit's SO₂ emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit has add-on SO₂ emission controls during any such control periods, the average of the amounts of the unit's SO₂ emissions rate (in lb/mmBtu) for such control periods during which the unit has add-on SO₂ emission controls.
- (e) Issuance of CAIR opt-in permit. After calculating the baseline heat input and the baseline SO₂ emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR SO₂ opt-in unit in § 96.280 and meets the elements certified in § 96.283(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR SO₂ opt-in unit unless the source already has a compliance account.
- (f) Issuance of denial of CAIR opt-in permit. Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR SO₂ opt-in unit in § 96.280 or meets the elements certified in § 96.283(a)(2), the permitting authority will issue a denial of a CAIR opt-in permit for the unit.
- (g) Date of entry into CAIR SO₂ Trading Program. A unit for which an initial CAIR opt-in permit is issued by the permitting authority shall become a CAIR SO₂ opt-in unit, and a CAIR SO₂ unit, as of the later of January 1, 2010 or January 1 of the first control period during which such CAIR opt-in permit is issued.
- (h) Repowered CAIR SO₂ opt-in unit.
 - (1) If CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR SO₂ opt-in unit of CAIR SO₂ allowances under § 96.288(c) and such unit is repowered after its date of entry into the CAIR SO₂ Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR SO₂ opt-in unit replacing the original CAIR SO₂ opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.
 - (2) Notwithstanding paragraphs (c) and (d) of this section, as of the date of start-up under paragraph (h)(1) of this section, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline SO₂ emission rate as the original CAIR SO₂ opt-in unit, and the original CAIR SO₂ opt-in unit shall no longer be treated as a CAIR SO₂ opt-in unit or a CAIR SO₂ unit.

§ 96.285 CAIR opt-in permit contents.

- (a) Each CAIR opt-in permit will contain:
 - (1) All elements required for a complete CAIR permit application under § 96.222;
 - (2) The certification in § 96.283(a)(2);

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- (3) The unit's baseline heat input under § 96.284(c);
 - (4) The unit's baseline SO₂ emission rate under § 96.284(d);
 - (5) A statement whether the unit is to be allocated CAIR SO₂ allowances under §96.288(b) or §96.288(c) (subject to the conditions in §§ 96.284(h) and 96.286(g));
 - (6) A statement that the unit may withdraw from the CAIR SO₂ Trading Program only in accordance with § 96.286; and
 - (7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 96.287.
- (b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 96.202 and, upon recordation by the Administrator under subpart FFF or GGG of this part or this subpart, every allocation, transfer, or deduction of CAIR SO₂ allowances to or from the compliance account of the source that includes a CAIR SO₂ opt-in unit covered by the CAIR opt-in permit.
- (c) The CAIR opt-in permit shall be included, in a format specified by the permitting authority, in the CAIR permit for the source where the CAIR SO₂ opt-in unit is located and in a title V operating permit or other federally enforceable permit for the source.

§ 96.286 Withdrawal from CAIR SO₂ Trading Program.

Except as provided under paragraph (g) of this section, a CAIR SO₂ opt-in unit may withdraw from the CAIR SO₂ Trading Program, but only if the permitting authority issues a notification to the CAIR designated representative of the CAIR SO₂ opt-in unit of the acceptance of the withdrawal of the CAIR SO₂ opt-in unit in accordance with paragraph (d) of this section.

- (a) Requesting withdrawal. In order to withdraw a CAIR SO₂ opt-in unit from the CAIR SO₂ Trading Program, the CAIR designated representative of the CAIR SO₂ opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of December 31 of a specified calendar year, which date must be at least 4 years after December 31 of the year of entry into the CAIR SO₂ Trading Program under §96.284(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.
- (b) Conditions for withdrawal. Before a CAIR SO₂ opt-in unit covered by a request under paragraph (a) of this section may withdraw from the CAIR SO₂ Trading Program and the CAIR opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:
- (1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR SO₂ opt-in unit must meet the requirement to hold CAIR SO₂ allowances under §96.206(c) and cannot have any excess emissions.
 - (2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of the source that includes the CAIR SO₂ opt-in unit CAIR SO₂ allowances equal in amount to and allocated for the same or a prior control period as any CAIR SO₂ allowances allocated to the CAIR SO₂ opt-in unit under §96.288 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR SO₂ units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR SO₂ opt-in unit may submit a CAIR

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SO₂ allowance transfer for any remaining CAIR SO₂ allowances to another CAIR SO₂ Allowance Tracking System in accordance with subpart GGG of this part.

- (c) Notification.
 - (1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of CAIR SO₂ allowances required), the permitting authority will issue a notification to the CAIR designated representative of the CAIR SO₂ opt-in unit of the acceptance of the withdrawal of the CAIR SO₂ opt-in unit as of midnight on December 31 of the calendar year for which the withdrawal was requested.
 - (2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the CAIR designated representative of the CAIR SO₂ opt-in unit that the CAIR SO₂ opt-in unit's request to withdraw is denied. Such CAIR SO₂ opt-in unit shall continue to be a CAIR SO₂ opt-in unit.
- (d) Permit amendment. After the permitting authority issues a notification under paragraph (c)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the CAIR permit covering the CAIR SO₂ opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (c)(1) of this section. The unit shall continue to be a CAIR SO₂ opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR SO₂ Trading Program concerning any control periods for which the unit is a CAIR SO₂ opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.
- (e) Reapplication upon failure to meet conditions of withdrawal. If the permitting authority denies the CAIR SO₂ opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.
- (f) Ability to reapply to the CAIR SO₂ Trading Program. Once a CAIR SO₂ opt-in unit withdraws from the CAIR SO₂ Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under § 96.283 for such CAIR SO₂ opt-in unit before the date that is 4 years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under § 96.284.
- (g) Inability to withdraw. Notwithstanding paragraphs (a) through (f) of this section, a CAIR SO₂ opt-in unit shall not be eligible to withdraw from the CAIR SO₂ Trading Program if the CAIR designated representative of the CAIR SO₂ opt-in unit requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to the CAIR SO₂ opt-in unit of CAIR SO₂ allowances under § 96.288(c).

§ 96.287 Change in regulatory status.

- (a) Notification. If a CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under § 96.204, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR SO₂ opt-in unit's regulatory status, within 30 days of such change.
- (b) Permitting authority's and Administrator's actions.
 - (1) If a CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under § 96.204, the permitting authority will revise the CAIR SO₂ opt-in unit's CAIR opt-in permit to meet the requirements of a

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CAIR permit under § 96.223, and remove the CAIR opt-in permit provisions, as of the date on which the CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under § 96.204.

- (2) (i) The Administrator will deduct from the compliance account of the source that includes a CAIR SO₂ opt-in unit that becomes a CAIR SO₂ unit under § 96.204, CAIR SO₂ allowances equal in amount to and allocated for the same or a prior control period as:
 - (A) Any CAIR SO₂ allowances allocated to the CAIR SO₂ opt-in unit under § 96.288 for any control period after the date on which the CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under § 96.204; and
 - (B) If the date on which the CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under § 96.204 is not December 31, the CAIR SO₂ allowances allocated to the CAIR SO₂ opt-in unit under § 96.288 for the control period that includes the date on which the CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under § 96.204, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under § 96.204 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.
- (ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR SO₂ unit that becomes a CAIR SO₂ unit under § 96.204 contains the CAIR SO₂ allowances necessary for completion of the deduction under paragraph (b)(2)(i) of this section.

§ 96.288 CAIR SO₂ allowance allocations to CAIR SO₂ opt-in units.

(a) Timing requirements.

- (1) When the CAIR opt-in permit is issued under § 96.284(e), the permitting authority will allocate CAIR SO₂ allowances to the CAIR SO₂ opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR SO₂ opt-in unit enters the CAIR SO₂ Trading Program under § 96.284(g), in accordance with paragraph (b) or (c) of this section.
- (2) By no later than October 31 of the control period in which a CAIR SO₂ opt-in unit enters the CAIR SO₂ Trading Program under § 96.284(g) and October 31 of each year thereafter, the permitting authority will allocate CAIR SO₂ allowances to the CAIR SO₂ opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR SO₂ opt-in unit, in accordance with paragraph (b) or (c) of this section.

(b) Calculation of allocation. For each control period for which a CAIR SO₂ opt-in unit is to be allocated CAIR SO₂ allowances, the permitting authority will allocate in accordance with the following procedures:

- (1) The heat input (in mmBtu) used for calculating the CAIR SO₂ allowance allocation will be the lesser of:
 - (i) The CAIR SO₂ opt-in unit's baseline heat input determined under § 96.284(c); or

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- (ii) The CAIR SO₂ opt-in unit's heat input, as determined in accordance with subpart HHH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR SO₂ opt-in unit enters the CAIR SO₂ Trading Program under § 96.284(g).
 - (2) The SO₂ emission rate (in lb/mmBtu) used for calculating CAIR SO₂ allowance allocations will be the lesser of:
 - (i) The CAIR SO₂ opt-in unit's baseline SO₂ emissions rate (in lb/mmBtu) determined under § 96.284(d) and multiplied by 70 percent; or
 - (ii) The most stringent State or Federal SO₂ emissions limitation applicable to the CAIR SO₂ opt-in unit at any time during the control period for which CAIR SO₂ allowances are to be allocated.
 - (3) The permitting authority will allocate CAIR SO₂ allowances to the CAIR SO₂ opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under paragraph (b)(1) of this section, multiplied by the SO₂ emission rate under paragraph (b)(2) of this section, and divided by 2,000 lb/ton.
- (c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under §96.283(a)(5)) providing for, allocation to a CAIR SO₂ opt-in unit of CAIR SO₂ allowances under this paragraph (subject to the conditions in §§ 96.284(h) and 96.286(g)), the permitting authority will allocate to the CAIR SO₂ opt-in unit as follows:
- (1) For each control period in 2010 through 2014 for which the CAIR SO₂ opt-in unit is to be allocated CAIR SO₂ allowances,
 - (i) The heat input (in mmBtu) used for calculating CAIR SO₂ allowance allocations will be determined as described in paragraph (b)(1) of this section.
 - (ii) The SO₂ emission rate (in lb/mmBtu) used for calculating CAIR SO₂ allowance allocations will be the lesser of:
 - (A) The CAIR SO₂ opt-in unit's baseline SO₂ emissions rate (in lb/mmBtu) determined under § 96.284(d); or
 - (B) The most stringent State or Federal SO₂ emissions limitation applicable to the CAIR SO₂ opt-in unit at any time during the control period in which the CAIR SO₂ opt-in unit enters the CAIR SO₂ Trading Program under § 96.284(g).
 - (iii) The permitting authority will allocate CAIR SO₂ allowances to the CAIR SO₂ opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under paragraph (c)(1)(i) of this section, multiplied by the SO₂ emission rate under paragraph (c)(1)(ii) of this section, and divided by 2,000 lb/ton.
 - (2) For each control period in 2015 and thereafter for which the CAIR SO₂ opt-in unit is to be allocated CAIR SO₂ allowances,
 - (i) The heat input (in mmBtu) used for calculating the CAIR SO₂ allowance allocations will be determined as described in paragraph (b)(1) of this section.

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- (ii) The SO₂ emission rate (in lb/mmBtu) used for calculating the CAIR SO₂ allowance allocation will be the lesser of:
 - (A) The CAIR SO₂ opt-in unit's baseline SO₂ emissions rate (in lb/mmBtu) determined under § 96.284(d) multiplied by 10 percent; or
 - (B) The most stringent State or Federal SO₂ emissions limitation applicable to the CAIR SO₂ opt-in unit at any time during the control period for which CAIR SO₂ allowances are to be allocated.
- (iii) The permitting authority will allocate CAIR SO₂ allowances to the CAIR SO₂ opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under paragraph (c)(2)(i) of this section, multiplied by the SO₂ emission rate under paragraph (c)(2)(ii) of this section, and divided by 2,000 lb/ton.
- (d) Recordation.
 - (1) The Administrator will record, in the compliance account of the source that includes the CAIR SO₂ opt-in unit, the CAIR SO₂ allowances allocated by the permitting authority to the CAIR SO₂ opt-in unit under paragraph (a)(1) of this section.
 - (2) By December 1 of the control period in which a CAIR SO₂ opt-in unit enters the CAIR SO₂ Trading Program under § 96.284(g), and December 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR SO₂ opt-in unit, the CAIR SO₂ allowances allocated by the permitting authority to the CAIR SO₂ opt-in unit under paragraph (a)(2) of this section.

Subparts JJJ—ZZZ [Reserved]

Authority: *T.C.A. §§68-201-105 and 4-5-201 et. seq.*

This notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of October, 2006. (10-20-06)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400 DIVISION OF AIR POLLUTION CONTROL

There will be a public hearing before the Technical Secretary of the Tennessee Air Pollution Control Board to consider the promulgation of an amendment to the Tennessee Air Pollution Control Regulations and the State Implementation Plan pursuant to Tennessee Code Annotated, Section 68-201-105. The comments received at this hearing will be presented to the Tennessee Air Pollution Control Board for their consideration in regards to the proposed regulatory amendment. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-201 et. seq. and will take place in the 9th Floor Conference Room, Division of Air Pollution Control, located at 9th Floor L&C Annex, 401 Church Street, Nashville, Tennessee 37243 at 9:00 a.m. on the 19th day of December, 2006.

Written comments will be included in the hearing records if received by the close of business on December 19, 2006, at the office of the Technical Secretary, Tennessee Air Pollution Control Board, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531. Additionally, comments may be submitted via attachments through electronic mail until the close of business on December 19, 2006.

Any individuals with disabilities who wish to participate in these proceedings or to review these filings should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be in person, by writing, telephone, or other means, and should be made no less than ten (10) days prior to December 19, 2006, or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator, 12th Floor L & C Tower, 401 Church Street, Nashville TN 37243, (615) 532-0207. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

If you have any questions about the origination of this rule change, you may contact Travis Blake at 615-532-0617. For complete copies of the text of the notice, please contact Travis Blake, Department of Environment and Conservation, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243.

SUMMARY AND SUBSTANCE OF PROPOSED RULE

SUMMARY

Rule 1200-3-27-.10 of the Tennessee Air Pollution Control Regulations (CAIR NO_x Annual Trading Program) is being amended. This requires the owner/operators of affected electric generating units (EGUs) to comply with annual NO_x emission limitations by limiting emissions from these sources, or by purchasing emission credits through a cap-and-trade program. The proposed changes will update the language of EPA's Federal rule (70 FR 25362, May 12, 2005), and State-specific revisions to the Federal Rule, with EPA's additions and corrections to the Federal rule language (71 FR 25386, April 28, 2006). Only the portions of the rule affected by these amendments are open to public comment.

SUBSTANCE OF PROPOSED RULE

CHAPTER 1200-3-27

CAIR NO_x ANNUAL TRADING PROGRAM

1200-3-27-.10 CAIR NO_x ANNUAL TRADING PROGRAM

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1200-3-27-.10 CAIR NO_x ANNUAL TRADING PROGRAM

- (1) The provisions of 40 CFR Part 96 concerning the CAIR NO_x Annual Trading Program are hereby adopted by reference with the following revisions:

- (a) The provisions of Sec. 96.143 as adopted for Tennessee are revised to read as follows:

§ 96.143 Compliance supplement pool.

1. In addition to the CAIR NO_x allowances allocated under 40 CFR Sec. 96.142, the permitting authority may allocate up to 8,944 tons of CAIR NO_x allowances for the control period in 2009.
2. For any CAIR NO_x unit in the State that achieves NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any State or federal emissions limitation applicable during such years, the CAIR designated representative of the unit may request early reduction credits, and allocation of CAIR NO_x allowances from the compliance supplement pool under part 1. of this subparagraph for such early reduction credits, in accordance with the following:
 - (i) The owners and operators of such CAIR NO_x unit shall monitor and report the NO_x emissions rate and the heat input of the unit in accordance with 40 CFR 96 subpart HH in each control period for which early reduction credit is requested.
 - (ii) The CAIR designated representative of such CAIR NO_x unit shall submit to the permitting authority by May 1, 2009 a request, in a format specified by the permitting authority, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the sum of the amounts (in tons) of the unit's NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any State or federal emissions limitation applicable during such years, determined in accordance with 40 CFR 96 subpart HH. NO_x emission reductions shall be calculated as follows:
 - (I) The unit's heat input in mmBtu for the control period shall be multiplied by the difference between the most stringent federally enforceable requirement (including, if the unit is in a NO_x averaging plan under 40 CFR 76.11, the highest annual NO_x emission rate for the unit that will result in group compliance under the NO_x averaging plan) and the unit's actual NO_x emission rate for such control period in lb/mmBtu, divided by 2,000 lbs/ton, and rounded to the nearest ton; or,
 - (II) For units with post combustion NO_x controls (selective catalytic reduction, selective noncatalytic reduction, or other post-combustion NO_x control as approved by the Technical Secretary), NO_x emission reductions shall be calculated by multiplying the unit's heat input during any period in which the control equipment is operated, excluding any period regulated by rule 1200-3-27-.06 (NO_x Budget Trading Program for State Implementation Plans), by the difference between the most stringent federally enforceable requirement (including, if the unit is in a NO_x averaging plan under 40 CFR §76.11, the highest annual NO_x emission rate for the unit that will result in group compliance under the NO_x averaging plan) and the unit's actual NO_x emission rate for such operating period in lb/mmBtu, divided by 2,000 lbs/ton, and rounded to the nearest ton.

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3. For any CAIR NO_x unit in the State whose compliance with CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period, the CAIR designated representative of the unit may request the allocation of CAIR NO_x allowances from the compliance supplement pool under part 1. of this subparagraph, in accordance with the following:
 - (i) The CAIR designated representative of such CAIR NO_x unit shall submit to the permitting authority by May 1, 2009 a request, in a format specified by the permitting authority, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the minimum amount of CAIR NO_x allowances necessary to remove such undue risk to the reliability of electricity supply.
 - (ii) In the request under subpart (i) of this part, the CAIR designated representative of such CAIR NO_x unit shall demonstrate that, in the absence of allocation to the unit of the amount of CAIR NO_x allowances requested, the unit's compliance with CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period. This demonstration must include a showing that it would not be feasible for the owners and operators of the unit to:
 - (I) Obtain a sufficient amount of electricity from other electricity generation facilities, during the installation of control technology at the unit for compliance with the CAIR NO_x emissions limitation, to prevent such undue risk; or
 - (II) Obtain under parts 2. and 4. of this subparagraph, or otherwise obtain, a sufficient amount of CAIR NO_x allowances to prevent such undue risk.
4. The permitting authority will review each request under parts 2. or 3. of this subparagraph submitted by May 1, 2009 and will allocate CAIR NO_x allowances for the control period in 2009 to CAIR NO_x units in the State and covered by such request as follows:
 - (i) Upon receipt of each such request, the permitting authority will make any necessary adjustments to the request to ensure that the amount of the CAIR NO_x allowances requested meets the requirements of parts 2. or 3. of this subparagraph.
 - (ii) If the State's compliance supplement pool under part 1. of this subparagraph has an amount of CAIR NO_x allowances not less than the total amount of CAIR NO_x allowances in all such requests (as adjusted under subpart (i) of this part), the permitting authority will allocate to each CAIR NO_x unit covered by such requests the amount of CAIR NO_x allowances requested (as adjusted under subpart (i) of this part).
 - (iii) If the State's compliance supplement pool under part 1. of this subparagraph has a smaller amount of CAIR NO_x allowances than the total amount of CAIR NO_x allowances in all such requests (as adjusted under subpart (i) of this part), the permitting authority will allocate CAIR NO_x allowances to each CAIR NO_x unit covered by such requests according to the following formula and rounding to the nearest whole allowance as appropriate:

Unit's allocation = (Unit's adjusted allocation) x (State's compliance supplement pool) / (Total adjusted allocations for all units)

Where:

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"Unit's allocation" is the number of CAIR NO_x allowances allocated to the unit from the State's compliance supplement pool.

"Unit's adjusted allocation" is the amount of CAIR NO_x allowances requested for the unit under parts 2. or 3. of this subparagraph, as adjusted under subpart (i) of this part.

"State's compliance supplement pool" is the amount of CAIR NO_x allowances in the State's compliance supplement pool.

"Total adjusted allocations for all units" is the sum of the amounts of allocations requested for all units under parts 2. or 3. of this subparagraph, as adjusted under subpart (i) of this part.

- (iv) By November 30, 2009, the permitting authority will determine, and submit to the Administrator, the allocations under subparts (ii) or (iii) of this part.
- (v) By January 1, 2010, the Administrator will record the allocations under subpart (iv) of this part.

(2) PART 96--CAIR NO_x Annual Trading Program

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Subpart AA—CAIR NO_x Annual Trading Program General Provisions

§96.101 Purpose.

This subpart and subparts BB through II establish the model rule comprising general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the State Clean Air Interstate Rule (CAIR) NO_x Annual Trading Program, under section 110 of the Clean Air Act and §51.123 of this chapter, as a means of mitigating interstate transport of fine particulates and

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nitrogen oxides. The owner or operator of a unit or a source shall comply with the requirements of this subpart and subparts BB through II as a matter of federal law only if the State with jurisdiction over the unit and the source incorporates by reference such subparts or otherwise adopts the requirements of such subparts in accordance with §51.123(o)(1) or (2) of this chapter, the State submits to the Administrator one or more revisions of the State implementation plan that include such adoption, and the Administrator approves such revisions. If the State adopts the requirements of such subparts in accordance with §51.123(o)(1) or (2) of this chapter, then the State authorizes the Administrator to assist the State in implementing the CAIR NO_x Annual Trading Program by carrying out the functions set forth for the Administrator in such subparts.

§96.102 Definitions.

The terms used in this subpart and subparts BB through II shall have the meanings set forth in this section as follows:

Account number means the identification number given by the Administrator to each CAIR NO_x Allowance Tracking System account.

Acid Rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

Acid Rain Program means a multistate sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or allocation means, with regard to CAIR NO_x allowances, the determination by a permitting authority or the Administrator of the amount of such CAIR NO_x allowances to be initially credited to a CAIR NO_x unit, a new unit set-aside, or other entity.

Allowance transfer deadline means, for a control period, midnight of March 1 (if it is a business day), or midnight of the first business day thereafter (if March 1 is not a business day) immediately following the control period and is the deadline by which a CAIR NO_x allowance transfer must be submitted for recordation in a CAIR NO_x source's compliance account in order to be used to meet the source's CAIR NO_x emissions limitation for such control period in accordance with §96.154.

Alternate CAIR designated representative means, for a CAIR NO_x source and each CAIR NO_x unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with subparts BB and II of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR NO_x Annual Trading Program. If the CAIR NO_x source is also a CAIR SO₂ source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR SO₂ Trading Program. If the CAIR NO_x source is also a CAIR NO_x Ozone Season source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_x Ozone Season Trading Program. If the CAIR NO_x source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program. If the CAIR NO_x source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate Hg Designated representative under the Hg Budget Trading Program.

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Automated data acquisition and handling system or DAHS means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under subpart HH of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart HH of this part.

Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

CAIR authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with subparts BB, FF, and II of this part, to transfer and otherwise dispose of CAIR NO_x allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

CAIR designated representative means, for a CAIR NO_x source and each CAIR NO_x unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with subparts BB and II of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO_x Annual Trading Program. If the CAIR NO_x source is also a CAIR SO₂ source, then this natural person shall be the same person as the CAIR designated representative under the CAIR SO₂ Trading Program. If the CAIR NO_x source is also a CAIR NO_x Ozone Season source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_x Ozone Season Trading Program. If the CAIR NO_x source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program. If the CAIR NO_x source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate Hg Designated representative under the Hg Budget Trading Program.

CAIR NO_x allowance means a limited authorization issued by a permitting authority or the Administrator under provisions of a State implementation plan that are approved under §51.123(o)(1) or (2) or (p) of this chapter, or under subpart EE of part 97 or §97.188 of this chapter, to emit one ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO_x Program. An authorization to emit nitrogen oxides that is not issued under provisions of a State implementation plan that are approved under § 51.123(o)(1) or (2) or (p) of this chapter or subpart EE of part 97 or §97.188 of this chapter shall not be a CAIR NO_x allowance.

CAIR NO_x allowance deduction or deduct CAIR NO_x allowances means the permanent withdrawal of CAIR NO_x allowances by the Administrator from a compliance account, e. g., in order to account for a specified number of tons of total nitrogen oxides emissions from all CAIR NO_x units at a CAIR NO_x source for a control period, determined in accordance with subpart HH of this part, or to account for excess emissions.

CAIR NO_x Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of CAIR NO_x allowances under the CAIR NO_x Annual Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

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CAIR NO_x Allowance Tracking System account means an account in the CAIR NO_x Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR NO_x allowances.

CAIR NO_x allowances held or hold CAIR NO_x allowances means the CAIR NO_x allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FF, GG, and II of this part, in a CAIR NO_x Allowance Tracking System account.

CAIR NO_x Annual Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AA through II of this part and §51.123 of this chapter or established by the Administrator in accordance with subparts AA through II of part 97 of this chapter and §§51.123 and 52.35 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

CAIR NO_x emissions limitation means, for a CAIR NO_x source, the tonnage equivalent, in NO_x emissions in a control period, of the CAIR NO_x allowances available for deduction for the source under §96.154(a) and (b) for the control period.

CAIR NO_x Ozone Season source means a source that is subject to the CAIR NO_x Ozone Season Trading Program.

CAIR NO_x Ozone Season Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAAA through IIII of this part and §51.123 of this chapter or established by the Administrator in accordance with Subparts AAAA through IIII of part 97 of this chapter and §§51.123(ee) and 52.35 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

CAIR NO_x source means a source that includes one or more CAIR NO_x units.

CAIR NO_x unit means a unit that is subject to the CAIR NO_x Annual Trading Program under §96.104 and, except for purposes of §96.105 and subpart EE of this part, a CAIR NO_x opt-in unit under subpart II of this part.

CAIR permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under subpart CC of this part, including any permit revisions, specifying the CAIR NO_x Annual Trading Program requirements applicable to a CAIR NO_x source, to each CAIR NO_x unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

CAIR SO₂ source means a source that is subject to the CAIR SO₂ Trading Program.

CAIR SO₂ Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAA through III of this part and §51.124 of this chapter or established by the Administrator in accordance with subparts AAA through III of part 97 of this chapter and §§51.124(r) and 52.36 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

Clean Air Act or CAA means the Clean Air Act, 42 U.S.C. 7401, et seq.

Coal means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

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Coal-derived fuel means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

Coal-fired means:

- (1) Except for purposes of subpart EE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year; or
- (2) For purposes of subpart EE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during a specified year.

Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:

- (1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and
- (2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity—
 - (i) For a topping-cycle cogeneration unit,
 - (A) Useful thermal energy not less than 5 percent of total energy output; and
 - (B) Useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.
 - (ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Combustion turbine means:

- (1) An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and
- (2) If the enclosed device under paragraph (1) of this definition is combined cycle, any associated duct burner, heat recovery steam generator, and steam turbine.

Commence commercial operation means, with regard to a unit:

- (1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 96.105 and § 96.184(h).
 - (i) For a unit that is a CAIR NO_x unit under § 96.104 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

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- (ii) For a unit that is a CAIR NO_x unit under § 96.104 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.
- (2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.105, for a unit that is not a CAIR NO_x unit under § 96.104 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_x unit under §96.104.
 - (i) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.
 - (ii) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

Commence operation means:

- (1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in § 96.184(h).
- (2) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.
- (3) For a unit that is replaced by a unit at the same source (e.g., repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate, except as provided in § 96.184(h).

Common stack means a single flue through which emissions from 2 or more units are exhausted.

Compliance account means a CAIR NO_x Allowance Tracking System account, established by the Administrator for a CAIR NO_x source under subpart FF or II of this part, in which any CAIR NO_x allowance allocations for the CAIR NO_x units at the source are initially recorded and in which are held any CAIR NO_x allowances available for use for a control period in order to meet the source's CAIR NO_x emissions limitation in accordance with §96.154.

Continuous emission monitoring system or CEMS means the equipment required under subpart HH of this part to sample, analyze, measure, and provide, by means of readings recorded at least once

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every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of nitrogen oxides emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with part 75 of this chapter. The following systems are the principal types of continuous emission monitoring systems required under subpart HH of this part:

- (1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);
- (2) A nitrogen oxides concentration monitoring system, consisting of a NO_x pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x emissions, in parts per million (ppm);
- (3) A nitrogen oxides emission rate (or NO_x-diluent) monitoring system, consisting of a NO_x pollutant concentration monitor, a diluent gas (CO₂ or O₂) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x concentration, in parts per million (ppm), diluent gas concentration, in percent CO₂ or O₂; and NO_x emission rate, in pounds per million British thermal units (lb/mmBtu);
- (4) A moisture monitoring system, as defined in §75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H₂O;
- (5) A carbon dioxide monitoring system, consisting of a CO₂ pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO₂ concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO₂ emissions, in percent CO₂; and
- (6) An oxygen monitoring system, consisting of an O₂ concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O₂, in percent O₂.

Control period means the period beginning January 1 of a calendar year, except as provided in §96.106(c)(2), and ending on December 31 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the CAIR designated representative and as determined by the Administrator in accordance with subpart HH of this part.

Excess emissions means any ton of nitrogen oxides emitted by the CAIR NO_x units at a CAIR NO_x source during a control period that exceeds the CAIR NO_x emissions limitation for the source.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

Fuel oil means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid, or gaseous state.

General account means a CAIR NO_x Allowance Tracking System account, established under subpart FF of this part, that is not a compliance account.

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Generator means a device that produces electricity.

Gross electrical output means, with regard to a cogeneration unit, electricity made available for use, including any such electricity used in the power production process (which process includes, but is not limited to, any onsite processing or treatment of fuel combusted at the unit and any on-site emission controls).

Heat input means, with regard to a specified period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the CAIR designated representative and determined by the Administrator in accordance with subpart HH of this part and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Heat input rate means the amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Hg Budget Trading Program means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance subpart HHHH of part 60 of this chapter and § 60.24(h)(6), or established by the Administrator under section 111 of the Clean Air Act, as a means of reducing national Hg emissions.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

- (1) For the life of the unit;
- (2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or
- (3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

Monitoring system means any monitoring system that meets the requirements of subpart HH of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

Most stringent State or Federal NO_x emissions limitation means, with regard to a unit, the lowest NO_x emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as of such installation as specified by the manufacturer of the generator or, starting from the completion of any subsequent

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physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as of such completion as specified by the person conducting the physical change.

Oil-fired means, for purposes of subpart EE of this part, combusting fuel oil for more than 15.0 percent of the annual heat input in a specified year and not qualifying as coal-fired.

Operator means any person who operates, controls, or supervises a CAIR NO_x unit or a CAIR NO_x source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Owner means any of the following persons:

- (1) With regard to a CAIR NO_x source or a CAIR NO_x unit at a source, respectively:
 - (i) Any holder of any portion of the legal or equitable title in a CAIR NO_x unit at the source or the CAIR NO_x unit;
 - (ii) Any holder of a leasehold interest in a CAIR NO_x unit at the source or the CAIR NO_x unit; or
 - (iii) Any purchaser of power from a CAIR NO_x unit at the source or the CAIR NO_x unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such CAIR NO_x unit; or
- (2) With regard to any general account, any person who has an ownership interest with respect to the CAIR NO_x allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR NO_x allowances.

Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the CAIR NO_x Annual Trading Program in accordance with subpart CC of this part or, if no such agency has been so authorized, the Administrator.

Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

Receive or receipt of means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.

Recordation, record, or recorded means, with regard to CAIR NO_x allowances, the movement of CAIR NO_x allowances by the Administrator into or between CAIR NO_x Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

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Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in §75.22 of this chapter.

Replacement, replace, or replaced means, with regard to a unit, the demolishing of a unit, or the permanent shutdown and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or shutdown unit (the replaced unit).

Repowered means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

- (1) Atmospheric or pressurized fluidized bed combustion;
- (2) Integrated gasification combined cycle;
- (3) Magnetohydrodynamics;
- (4) Direct and indirect coal-fired turbines;
- (5) Integrated gasification fuel cells; or
- (6) As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (1) through (5) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

Serial number means, for a CAIR NO_x allowance, the unique identification number assigned to each CAIR NO_x allowance by the Administrator.

Sequential use of energy means:

- (1) For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or
- (2) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

Solid waste incineration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a "solid waste incineration unit" as defined in section 129(g)(1) of the Clean Air Act.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the Clean Air Act, a "source," including a "source" with multiple units, shall be considered a single "facility."

State means one of the States or the District of Columbia that adopts the CAIR NO_x Annual Trading Program pursuant to §51.123(o)(1) or (2) of this chapter.

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

- (1) In person;

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- (2) By United States Postal Service; or
- (3) By other means of dispatch or transmission and delivery. Compliance with any “submission” or “service” deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the Clean Air Act and part 70 or part 71 of this chapter.

Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.

Ton means 2,000 pounds. For the purpose of determining compliance with the CAIR NO_x emissions limitation, total tons of nitrogen oxides emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with subpart HH of this part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

Total energy output means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

Unit means a stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour or hour of unit operation means an hour in which a unit combusts any fuel.

Useful power means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:

- (1) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;
- (2) Used in a heating application (e.g., space heating or domestic hot water heating); or
- (3) Used in a space cooling application (i.e., thermal energy used by an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

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§96.103 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

Btu—British thermal unit
CO₂—carbon dioxide
H₂O—water
Hg—mercury
hr—hour
kW—kilowatt electrical
kWh—kilowatt hour
lb—pound
mmBtu—million Btu
MWe—megawatt electrical
MWh—megawatt hour
NO_x—nitrogen oxides
O₂—oxygen
ppm—parts per million
scfh—standard cubic feet per hour
SO₂—sulfur dioxide
yr—year

§96.104 Applicability.

(a) Except as provided in paragraph (b) of this section:

- (1) The following units in a State shall be CAIR NO_x units, and any source that includes one or more such units shall be a CAIR NO_x source, subject to the requirements of this subpart and subparts BB through HH of this part: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.
- (2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR NO_x unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR NO_x unit as provided in paragraph (a)(1) of this section on the first date on which it both combusts fossil fuel and serves such generator.

(b) The units in a State that meet the requirements set forth in paragraph (b)(1)(i), (b)(2)(i), or (b)(2)(ii) of this section shall not be CAIR NO_x units:

- (1) (i) Any unit that is a CAIR NO_x unit under paragraph (a)(1) or (2) of this section:
 - (A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and
 - (B) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

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- (ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.
- (2) (i) Any unit that is a CAIR NO_x unit under paragraph (a)(1) or (2) of this section commencing operation before January 1, 1985:
 - (A) Qualifying as a solid waste incineration unit; and
 - (B) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).
- (ii) Any unit that is a CAIR NO_x unit under paragraph (a)(1) or (2) of this section commencing operation on or after January 1, 1985:
 - (A) Qualifying as a solid waste incineration unit; and
 - (B) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).
- (iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (b)(2)(i) or (ii) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

§96.105 Retired unit exemption.

- (a) (1) Any CAIR NO_x unit that is permanently retired and is not a CAIR NO_x opt-in unit under subpart II of this part shall be exempt from the CAIR NO_x Annual Trading Program, except for the provisions of this section, §96.102, §96.103, §96.104, §96.106(c)(4) through (7), §96.107, and subparts BB and EE through GG of this part.
- (2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CAIR NO_x unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR permit for the unit and shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit was permanently retired on a specific date and will comply with the requirements of paragraph (b) of this section.

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- (3) After receipt of the statement under paragraph (a)(2) of this section, the permitting authority will amend any permit under subpart CC of this part covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (a)(1) and (b) of this section.
- (b) Special provisions.
- (1) A unit exempt under paragraph (a) of this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.
 - (2) The permitting authority will allocate CAIR NO_x allowances under subpart EE of this part to a unit exempt under paragraph (a) of this section.
 - (3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.
 - (4) The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CAIR NO_x Annual Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.
 - (5) A unit exempt under paragraph (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under §96.122 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the unit resumes operation.
 - (6) On the earlier of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption:
 - (i) The date on which the CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(5) of this section;
 - (ii) The date on which the CAIR designated representative is required under paragraph (b)(5) of this section to submit a CAIR permit application for the unit; or
 - (iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.
 - (7) For the purpose of applying monitoring, reporting, and recordkeeping requirements under subpart HH of this part, a unit that loses its exemption under paragraph (a) of this section shall be treated as a unit that commences commercial operation on the first date on which the unit resumes operation.

§96.106 Standard requirements.

- (a) Permit requirements.

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- (1) The CAIR designated representative of each CAIR NO_x source required to have a title V operating permit and each CAIR NO_x unit required to have a title V operating permit at the source shall:
 - (i) Submit to the permitting authority a complete CAIR permit application under §96.122 in accordance with the deadlines specified in §96.121; and
 - (ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.
 - (2) The owners and operators of each CAIR NO_x source required to have a title V operating permit and each CAIR NO_x unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority under subpart CC of this part for the source and operate the source and the unit in compliance with such CAIR permit.
 - (3) Except as provided in subpart II of this part, the owners and operators of a CAIR NO_x source that is not otherwise required to have a title V operating permit and each CAIR NO_x unit that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CC of this part for such CAIR NO_x source and such CAIR NO_x unit.
- (b) Monitoring, reporting, and recordkeeping requirements.
- (1) The owners and operators, and the CAIR designated representative, of each CAIR NO_x source and each CAIR NO_x unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subpart HH of this part.
 - (2) The emissions measurements recorded and reported in accordance with subpart HH of this part shall be used to determine compliance by each CAIR NO_x source with the CAIR NO_x emissions limitation under paragraph (c) of this section.
- (c) Nitrogen oxides emission requirements.
- (1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO_x source and each CAIR NO_x unit at the source shall hold, in the source's compliance account, CAIR NO_x allowances available for compliance deductions for the control period under §96.154(a) in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO_x units at the source, as determined in accordance with subpart HH of this part.
 - (2) A CAIR NO_x unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of January 1, 2009 or the deadline for meeting the unit's monitor certification requirements under §96.170(b)(1), (2), or (5) and for each control period thereafter.
 - (3) A CAIR NO_x allowance shall not be deducted, for compliance with the requirements under paragraph (c)(1) of this section, for a control period in a calendar year before the year for which the CAIR NO_x allowance was allocated.
 - (4) CAIR NO_x allowances shall be held in, deducted from, or transferred into or among CAIR NO_x Allowance Tracking System accounts in accordance with subparts FF, GG, and II of this part.

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- (5) A CAIR NO_x allowance is a limited authorization to emit one ton of nitrogen oxides in accordance with the CAIR NO_x Annual Trading Program. No provision of the CAIR NO_x Annual Trading Program, the CAIR permit application, the CAIR permit, or an exemption under §96.105 and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.
 - (6) A CAIR NO_x allowance does not constitute a property right.
 - (7) Upon recordation by the Administrator under subparts EE, FF, GG, or II of this part, every allocation, transfer, or deduction of a CAIR NO_x allowance to or from a CAIR NO_x source's compliance account is incorporated automatically in any CAIR permit of the source.
- (d) Excess emissions requirements.
- (1) The owners and operators of the source and each CAIR NO_x unit at the source shall surrender the CAIR NO_x allowances required for deduction under §96.154(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and
 - (2) Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.
- (e) Recordkeeping and reporting requirements.
- (1) Unless otherwise provided, the owners and operators of the CAIR NO_x source and each CAIR NO_x unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the permitting authority or the Administrator.
 - (i) The certificate of representation under §96.113 for the CAIR designated representative for the source and each CAIR NO_x unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under §96.113 changing the CAIR designated representative.
 - (ii) All emissions monitoring information, in accordance with subpart HH of this part, provided that to the extent that subpart HH of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.
 - (iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO_x Annual Trading Program.
 - (iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO_x Annual Trading Program or to demonstrate compliance with the requirements of the CAIR NO_x Annual Trading Program.
 - (2) The CAIR designated representative of a CAIR NO_x source and each CAIR NO_x unit at the source shall submit the reports required under the CAIR NO_x Annual Trading Program, including those under subpart HH of this part.
- (f) Liability.

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- (1) Each CAIR NO_x source and each CAIR NO_x unit shall meet the requirements of the CAIR NO_x Annual Trading Program.
 - (2) Any provision of the CAIR NO_x Annual Trading Program that applies to a CAIR NO_x source or the CAIR designated representative of a CAIR NO_x source shall also apply to the owners and operators of such source and of the CAIR NO_x units at the source.
 - (3) Any provision of the CAIR NO_x Annual Trading Program that applies to a CAIR NO_x unit or the CAIR designated representative of a CAIR NO_x unit shall also apply to the owners and operators of such unit.
- (g) Effect on other authorities. No provision of the CAIR NO_x Annual Trading Program, a CAIR permit application, a CAIR permit, or an exemption under §96.105 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR NO_x source or CAIR NO_x unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§96.107 Computation of time.

- (a) Unless otherwise stated, any time period scheduled, under the CAIR NO_x Annual Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.
- (b) Unless otherwise stated, any time period scheduled, under the CAIR NO_x Annual Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.
- (c) Unless otherwise stated, if the final day of any time period, under the CAIR NO_x Annual Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§96.108 Appeal procedures.

The appeal procedures for decisions of the Administrator under the CAIR NO_x Annual Trading Program are set forth in part 78 of this chapter.

Subpart BB—CAIR Designated Representative for CAIR NO_x Sources

§96.110 Authorization and responsibilities of CAIR designated representative.

- (a) Except as provided under §96.111, each CAIR NO_x source, including all CAIR NO_x units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR NO_x Annual Trading Program concerning the source or any CAIR NO_x unit at the source.
- (b) The CAIR designated representative of the CAIR NO_x source shall be selected by an agreement binding on the owners and operators of the source and all CAIR NO_x units at the source and shall act in accordance with the certification statement in §96.113(a)(4)(iv).
- (c) Upon receipt by the Administrator of a complete certificate of representation under §96.113, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR NO_x source represented and each CAIR NO_x unit at the source in all matters pertaining to the CAIR

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NO_x Annual Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

- (d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR NO_x Allowance Tracking System account will be established for a CAIR NO_x unit at a source, until the Administrator has received a complete certificate of representation under §96.113 for a CAIR designated representative of the source and the CAIR NO_x units at the source.
- (e)
 - (1) Each submission under the CAIR NO_x Annual Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR NO_x source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."
 - (2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a CAIR NO_x source or a CAIR NO_x unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§96.111 Alternate CAIR designated representative.

- (a) A certificate of representation under §96.113 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.
- (b) Upon receipt by the Administrator of a complete certificate of representation under §96.113, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.
- (c) Except in this section and §§96.102, 96.110(a) and (d), 96.112, 96.113, 96.115, 96.151, and 96.182, whenever the term "CAIR designated representative" is used in subparts AA through II of this part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

§96.112 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

- (a) Changing CAIR designated representative. The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under §96.113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time

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and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR NO_x source and the CAIR NO_x units at the source.

- (b) Changing alternate CAIR designated representative. The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under §96.113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR NO_x source and the CAIR NO_x units at the source.
- (c) Changes in owners and operators.
 - (1) In the event an owner or operator of a CAIR NO_x source or a CAIR NO_x unit is not included in the list of owners and operators in the certificate of representation under §96.113, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the permitting authority, the Administrator, or a court, as if the owner or operator were included in such list.
 - (2) Within 30 days following any change in the owners and operators of a CAIR NO_x source or a CAIR NO_x unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under §96.113 amending the list of owners and operators to include the change.

§96.113 Certificate of representation.

- (a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the Administrator:
 - (1) Identification of the CAIR NO_x source, and each CAIR NO_x unit at the source, for which the certificate of representation is submitted, including identification and nameplate capacity of each generator served by each such unit.
 - (2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR designated representative and any alternate CAIR designated representative.
 - (3) A list of the owners and operators of the CAIR NO_x source and of each CAIR NO_x unit at the source.
 - (4) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative—
 - (i) “I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR NO_x unit at the source.”

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- (ii) “I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_x Annual Trading Program on behalf of the owners and operators of the source and of each CAIR NO_x unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions.”
 - (iii) “I certify that the owners and operators of the source and of each CAIR NO_x unit at the source shall be bound by any order issued to me by the Administrator, the permitting authority, or a court regarding the source or unit.”
 - (iv) “Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR NO_x unit, or where a utility or industrial customer purchases power from a CAIR NO_x unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the ‘CAIR designated representative’ or ‘alternate CAIR designated representative’, as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR NO_x unit at the source; and CAIR NO_x allowances and proceeds of transactions involving CAIR NO_x allowances will be deemed to be held or distributed in proportion to each holder’s legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR NO_x allowances by contract, CAIR NO_x allowances and proceeds of transactions involving CAIR NO_x allowances will be deemed to be held or distributed in accordance with the contract.”
- (5) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.
- (b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§96.114 Objections concerning CAIR designated representative.

- (a) Once a complete certificate of representation under §96.113 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under §96.113 is received by the Administrator.
- (b) Except as provided in §96.112(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR NO_x Annual Trading Program.
- (c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR NO_x allowance transfers.

§ 96.115 Delegation by CAIR designated representative and alternate CAIR designated representative.

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- (a) A CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.
- (b) An alternate CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.
- (c) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the CAIR designated representative or alternate CAIR designated representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator that includes the following elements:
 - (1) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR designated representative or alternate CAIR designated representative;
 - (2) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to as an “agent”);
 - (3) For each such natural person, a list of the type or types of electronic submissions under paragraph (a) or (b) of this section for which authority is delegated to him or her; and
 - (4) The following certification statements by such CAIR designated representative or alternate CAIR designated representative:
 - (i) “I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR designated representative or alternate CAIR designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 96.115(d) shall be deemed to be an electronic submission by me.”
 - (ii) “Until this notice of delegation is superseded by another notice of delegation under 40 CFR 96.115(d), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 96.115 is terminated.”
- (d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the CAIR designated representative or alternate CAIR designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR designated representative or alternate CAIR designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.
- (e) Any electronic submission covered by the certification in paragraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under paragraph (d) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

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Subpart CC—Permits

§96.120 General CAIR Annual Trading Program permit requirements.

- (a) For each CAIR NO_x source required to have a title V operating permit or required, under subpart II of this part, to have a title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the title V permit or other federally enforceable permit as applicable shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter or the permitting authority's regulations for other federally enforceable permits as applicable, except as provided otherwise by §96.105, this subpart, and subpart II of this part.
- (b) Each CAIR permit shall contain, with regard to the CAIR NO_x source and the CAIR NO_x units at the source covered by the CAIR permit, all applicable CAIR NO_x Annual Trading Program, CAIR NO_x Ozone Season Trading Program, and CAIR SO₂ Trading Program requirements and shall be a complete and separable portion of the title V operating permit or other federally enforceable permit under paragraph (a) of this section.

§96.121 Submission of CAIR permit applications.

- (a) Duty to apply. The CAIR designated representative of any CAIR NO_x source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under §96.122 for the source covering each CAIR NO_x unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the CAIR NO_x unit commences commercial operation, except as provided in §96.183(a).
- (b) Duty to Reapply. For a CAIR NO_x source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under §96.122 for the source covering each CAIR NO_x unit at the source to renew the CAIR permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal, except as provided in §96.183(b).

§96.122 Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the following elements concerning the CAIR NO_x source for which the application is submitted, in a format prescribed by the permitting authority:

- (a) Identification of the CAIR NO_x source;
- (b) Identification of each CAIR NO_x unit at the CAIR NO_x source; and
- (c) The standard requirements under §96.106.

§96.123 CAIR permit contents and term.

- (a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all elements required for a complete CAIR permit application under §96.122.
- (b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under §96.102 and, upon recordation by the Administrator under subpart EE, FF, GG, or II of this part, every

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allocation, transfer, or deduction of a CAIR NO_x allowance to or from the compliance account of the CAIR NO_x source covered by the permit.

- (c) The term of the CAIR permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR NO_x source's title V operating permit or other federally enforceable permit as applicable.

§96.124 CAIR permit revisions.

Except as provided in §96.123(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations or the permitting authority's regulations for other federally enforceable permits as applicable addressing permit revisions.

Subpart DD [Reserved]

Subpart EE—CAIR NO_x Allowance Allocations

§96.140 State trading budgets.

The State trading budgets for annual allocations of CAIR NO_x allowances for the control periods in 2009 through 2014 and in 2015 and thereafter are respectively as follows:

State	State trading budget for 2009–2014 (tons)	State trading budget for 2015 and thereafter (tons)
Alabama	69,020	57,517
District of Columbia	144	120
Florida	99,445	82,871
Georgia	66,321	55,268
Illinois	76,230	63,525
Indiana	108,935	90,779
Iowa	32,692	27,243
Kentucky	83,205	69,337
Louisiana	35,512	29,593
Maryland	27,724	23,104
Michigan	65,304	54,420
Minnesota	31,443	26,203
Mississippi	17,807	14,839
Missouri	59,871	49,892
New York	45,617	38,014
North Carolina	62,183	51,819
Ohio	108,667	90,556
Pennsylvania	99,049	82,541

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South Carolina	32,662	27,219
Tennessee	50,973	42,478
Texas	181,014	150,845
Virginia	36,074	30,062
West Virginia	74,220	61,850
Wisconsin	40,759	33,966

§96.141 Timing requirements for CAIR NO_x allowance allocations.

- (a) By October 31, 2006, the permitting authority will submit to the Administrator the CAIR NO_x allowance allocations, in a format prescribed by the Administrator and in accordance with §96.142(a) and (b), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.
- (b) By October 31, 2009 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the CAIR NO_x allowance allocations, in a format prescribed by the Administrator and in accordance with §96.142(a) and (b), for the control period in the sixth year after the year of the applicable deadline for submission under this paragraph.
- (c) By October 31, 2009 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the CAIR NO_x allowance allocations, in a format prescribed by the Administrator and in accordance with §96.142(a), (c), and (d), for the control period in the year of the applicable deadline for submission under this paragraph.

§96.142 CAIR NO_x allowance allocations.

- (a) (1) The baseline heat input (in mmBtu) used with respect to CAIR NO_x allowance allocations under paragraph (b) of this section for each CAIR NO_x unit will be:
 - (i) For units commencing operation before January 1, 2001 the average of the 3 highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:
 - (A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;
 - (B) If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and
 - (C) If the unit is not subject to paragraph (a)(1)(i)(A) or (B) of this section, the unit's control period heat input for such year is multiplied by 40 percent.
 - (ii) For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.
- (2) (i) A unit's control period heat input, and a unit's status as coal-fired or oil-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO_x emissions during a calendar year under paragraph (c)(3) of this section, will be determined in accordance with part 75 of this chapter, to the extent the unit was

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otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

- (ii) A unit's converted control period heat input for a calendar year specified under paragraph (a)(1)(ii) of this section equals:
 - (A) Except as provided in paragraph (a)(2)(ii)(B) or (C) of this section, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, and divided by 1,000,000 Btu/mmBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;
 - (B) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/mmBtu; or
 - (C) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,413 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.
- (b)
 - (1) For each control period in 2009 and thereafter, the permitting authority will allocate to all CAIR NO_x units in the State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO_x allowances equal to 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the tons of NO_x emissions in the State trading budget under §96.140 (except as provided in paragraph (d) of this section).
 - (2) The permitting authority will allocate CAIR NO_x allowances to each CAIR NO_x unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_x allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such CAIR NO_x unit to the total amount of baseline heat input of all such CAIR NO_x units in the State and rounding to the nearest whole allowance as appropriate.
- (c) For each control period in 2009 and thereafter, the permitting authority will allocate CAIR NO_x allowances to CAIR NO_x units in a State that are not allocated CAIR NO_x allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input but all CAIR NO_x allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:

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- (1) The permitting authority will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_x allowances equal to 5 percent for a control period in 2009 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of tons of NO_x emissions in the State trading budget under §96.140.
- (2) The CAIR designated representative of such a CAIR NO_x unit may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated CAIR NO_x allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x allowances under paragraph (b) of this section. A separate CAIR NO_x allowance allocation request for each control period for which CAIR NO_x allowances are sought must be submitted on or before May 1 of such control period and after the date on which the CAIR NO_x unit commences commercial operation.
- (3) In a CAIR NO_x allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_x allowances in an amount not exceeding the CAIR NO_x unit's total tons of NO_x emissions during the calendar year immediately before such control period.
- (4) The permitting authority will review each CAIR NO_x allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO_x allowances for each control period pursuant to such request as follows:
 - (i) The permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.
 - (ii) On or after May 1 of the control period, the permitting authority will determine the sum of the CAIR NO_x allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.
 - (iii) If the amount of CAIR NO_x allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the permitting authority will allocate the amount of CAIR NO_x allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO_x unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.
 - (iv) If the amount of CAIR NO_x allowances in the new unit set-aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the permitting authority will allocate to each CAIR NO_x unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR NO_x allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO_x allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.
 - (v) The permitting authority will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x allowances (if any) allocated for the control period to the CAIR NO_x unit covered by the request.

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- (d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR NO_x allowances remain in the new unit set-aside for the control period, the permitting authority will allocate to each CAIR NO_x unit that was allocated CAIR NO_x allowances under paragraph (b) of this section an amount of CAIR NO_x allowances equal to the total amount of such remaining unallocated CAIR NO_x allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the amount of tons of NO_x emissions in the State trading budget under §96.140, and rounded to the nearest whole allowance as appropriate.

§96.143 Compliance supplement pool.

- (a) In addition to the CAIR NO_x allowances allocated under §96.142, the permitting authority may allocate for the control period in 2009 up to the following amount of CAIR NO_x allowances to CAIR NO_x units in the respective State:

State	Compliance supplement pool
Alabama	10,166
District Of Columbia	0
Florida	8,335
Georgia	12,397
Illinois	11,299
Indiana	20,155
Iowa	6,978
Kentucky	14,935
Louisiana	2,251
Maryland	4,670
Michigan	8,347
Minnesota	6,528
Mississippi	3,066
Missouri	9,044
New York	0
North Carolina	0
Ohio	25,037
Pennsylvania	16,009
South Carolina	2,600
Tennessee	8,944
Texas	772
Virginia	5,134
West Virginia	16,929
Wisconsin	4,898

- (b) For any CAIR NO_x unit in the State that achieves NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any State or federal emissions limitation applicable during

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such years, the CAIR designated representative of the unit may request early reduction credits, and allocation of CAIR NO_x allowances from the compliance supplement pool under paragraph (a) of this section for such early reduction credits, in accordance with the following:

- (1) The owners and operators of such CAIR NO_x unit shall monitor and report the NO_x emissions rate and the heat input of the unit in accordance with subpart HH of this part in each control period for which early reduction credit is requested.
 - (2) The CAIR designated representative of such CAIR NO_x unit shall submit to the permitting authority by May 1, 2009 a request, in a format specified by the permitting authority, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the sum of the amounts (in tons) of the unit's NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any State or federal emissions limitation applicable during such years, determined in accordance with subpart HH of this part.
- (c) For any CAIR NO_x unit in the State whose compliance with CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period, the CAIR designated representative of the unit may request the allocation of CAIR NO_x allowances from the compliance supplement pool under paragraph (a) of this section, in accordance with the following:
- (1) The CAIR designated representative of such CAIR NO_x unit shall submit to the permitting authority by May 1, 2009 a request, in a format specified by the permitting authority, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the minimum amount of CAIR NO_x allowances necessary to remove such undue risk to the reliability of electricity supply.
 - (2) In the request under paragraph (c)(1) of this section, the CAIR designated representative of such CAIR NO_x unit shall demonstrate that, in the absence of allocation to the unit of the amount of CAIR NO_x allowances requested, the unit's compliance with CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period. This demonstration must include a showing that it would not be feasible for the owners and operators of the unit to:
 - (i) Obtain a sufficient amount of electricity from other electricity generation facilities, during the installation of control technology at the unit for compliance with the CAIR NO_x emissions limitation, to prevent such undue risk; or
 - (ii) Obtain under paragraphs (b) and (d) of this section, or otherwise obtain, a sufficient amount of CAIR NO_x allowances to prevent such undue risk.
- (d) The permitting authority will review each request under paragraph (b) or (c) of this section submitted by May 1, 2009 and will allocate CAIR NO_x allowances for the control period in 2009 to CAIR NO_x units in the State and covered by such request as follows:
- (1) Upon receipt of each such request, the permitting authority will make any necessary adjustments to the request to ensure that the amount of the CAIR NO_x allowances requested meets the requirements of paragraph (b) or (c) of this section.
 - (2) If the State's compliance supplement pool under paragraph (a) of this section has an amount of CAIR NO_x allowances not less than the total amount of CAIR NO_x allowances

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in all such requests (as adjusted under paragraph (d)(1) of this section), the permitting authority will allocate to each CAIR NO_x unit covered by such requests the amount of CAIR NO_x allowances requested (as adjusted under paragraph (d)(1) of this section).

- (3) If the State's compliance supplement pool under paragraph (a) of this section has a smaller amount of CAIR NO_x allowances than the total amount of CAIR NO_x allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the permitting authority will allocate CAIR NO_x allowances to each CAIR NO_x unit covered by such requests according to the following formula and rounding to the nearest whole allowance as appropriate:

Unit's allocation = Unit's adjusted allocation × (State's compliance supplement pool ÷ Total adjusted allocations for all units)

Where:

"Unit's allocation" is the amount of CAIR NO_x allowances allocated to the unit from the State's compliance supplement pool.

"Unit's adjusted allocation" is the amount of CAIR NO_x allowances requested for the unit under paragraph (b) or (c) of this section, as adjusted under paragraph (d)(1) of this section.

"State's compliance supplement pool" is the amount of CAIR NO_x allowances in the State's compliance supplement pool.

"Total adjusted allocations for all units" is the sum of the amounts of allocations requested for all units under paragraph (b) or (c) of this section, as adjusted under paragraph (d)(1) of this section.

- (4) By November 30, 2009, the permitting authority will determine, and submit to the Administrator, the allocations under paragraph (d)(2) or (3) of this section.
- (5) By January 1, 2010, the Administrator will record the allocations under paragraph (d)(4) of this section.

Subpart FF—CAIR NO_x Allowance Tracking System

§96.150 [Reserved]

§96.151 Establishment of accounts.

- (a) Compliance accounts. Except as provided in §96.184(e), upon receipt of a complete certificate of representation under §96.113, the Administrator will establish a compliance account for the CAIR NO_x source for which the certificate of representation was submitted unless the source already has a compliance account.
- (b) General accounts.
- (1) Application for general account.
- (i) Any person may apply to open a general account for the purpose of holding and transferring CAIR NO_x allowances. An application for a general account may

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designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.

- (ii) A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:
 - (A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR authorized account representative and any alternate CAIR authorized account representative;
 - (B) Organization name and type of organization, if applicable;
 - (C) A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR NO_x allowances held in the general account;
 - (D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: "I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR NO_x allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_x Annual Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account."
 - (E) The signature of the CAIR authorized account representative and any alternate CAIR authorized account representative and the dates signed.
 - (iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.
- (2) Authorization of CAIR authorized account representative or alternate CAIR authorized account representative.
- (i) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:
 - (A) The Administrator will establish a general account for the person or persons for whom the application is submitted.
 - (B) The CAIR authorized account representative and any alternate CAIR authorized account representative for the general account shall represent

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and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR NO_x allowances held in the general account in all matters pertaining to the CAIR NO_x Annual Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account.

- (C) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.
- (ii) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR NO_x allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative:

“I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR NO_x allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”
- (iii) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(ii) of this section.
- (3) Changing CAIR authorized account representative and alternate CAIR authorized account representative; changes in persons with ownership interest.
 - (i) The CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_x allowances in the general account.
 - (ii) The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding

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complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_x allowances in the general account.

- (iii) (A) In the event a person having an ownership interest with respect to CAIR NO_x allowances in the general account is not included in the list of such persons in the application for a general account, such person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR authorized account representative and any alternate CAIR authorized account representative of the account, and the decisions and orders of the Administrator or a court, as if the person were included in such list.
 - (B) Within 30 days following any change in the persons having an ownership interest with respect to CAIR NO_x allowances in the general account, including the addition of a new person, the CAIR authorized account representative or any alternate CAIR authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR NO_x allowances in the general account to include the change.
- (4) Objections concerning CAIR authorized account representative or alternate CAIR authorized account representative.
 - (i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.
 - (ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative or the finality of any decision or order by the Administrator under the CAIR NO_x Annual Trading Program.
 - (iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR NO_x allowance transfers.
- (5) Delegation by CAIR authorized account representative and alternate CAIR authorized account representative.

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- (i) A CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FF and GG of this part.
- (ii) An alternate CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FF and GG of this part.
- (iii) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (b)(5)(i) or (ii) of this section, the CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:
 - (A) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR authorized account representative or alternate CAIR authorized account representative;
 - (B) The name, address, e-mail address, telephone number, and, facsimile transmission number (if any) of each such natural person (referred to as an “agent”);
 - (C) For each such natural person, a list of the type or types of electronic submissions under paragraph (b)(5)(i) or (ii) of this section for which authority is delegated to him or her;
 - (D) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: “I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR authorized account representative or alternate CAIR authorized representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 96.151(b)(5)(iv) shall be deemed to be an electronic submission by me.”; and
 - (E) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative:

“Until this notice of delegation is superseded by another notice of delegation under 40 CFR 96.151 (b)(5)(iv), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 96.151 (b)(5) is terminated.”
- (iv) A notice of delegation submitted under paragraph (b)(5)(iii) of this section shall be effective, with regard to the CAIR authorized account representative or alternate CAIR authorized account representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

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- (v) Any electronic submission covered by the certification in paragraph (b)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (b)(5)(iv) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.
- (c) Account identification. The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

§96.152 Responsibilities of CAIR authorized account representative.

Following the establishment of a CAIR NO_x Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR NO_x allowances in the account, shall be made only by the CAIR authorized account representative for the account.

§96.153 Recordation of CAIR NO_x allowance allocations.

- (a) By September 30, 2007, the Administrator will record in the CAIR NO_x source's compliance account the CAIR NO_x allowances allocated for the CAIR NO_x units at the source, as submitted by the permitting authority in accordance with §96.141(a), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.
- (b) By December 1, 2009, the Administrator will record in the CAIR NO_x source's compliance account the CAIR NO_x allowances allocated for the CAIR NO_x units at the source, as submitted by the permitting authority in accordance with §96.141(b), for the control period in 2015.
- (c) By December 1, 2009 and December 1 of each year thereafter, the Administrator will record in the CAIR NO_x source's compliance account the CAIR NO_x allowances allocated for the CAIR NO_x units at the source, as submitted by the permitting authority in accordance with § 96.141(b), for the control period in the sixth year after the year of the applicable deadline for recordation under this paragraph.
- (d) By December 1, 2009 and December 1 of each year thereafter, the Administrator will record in the CAIR NO_x source's compliance account the CAIR NO_x allowances allocated for the CAIR NO_x units at the source, as submitted by the permitting authority in accordance with §96.141(c), for the control period in the year of the applicable deadline for recordation under this paragraph.
- (e) Serial numbers for allocated CAIR NO_x allowances. When recording the allocation of CAIR NO_x allowances for a CAIR NO_x unit in a compliance account, the Administrator will assign each CAIR NO_x allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR NO_x allowance is allocated.

§96.154 Compliance with CAIR NO_x emissions limitation.

- (a) Allowance transfer deadline. The CAIR NO_x allowances are available to be deducted for compliance with a source's CAIR NO_x emissions limitation for a control period in a given calendar year only if the CAIR NO_x allowances:
 - (1) Were allocated for the control period in the year or a prior year, and;

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- (2) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR NO_x allowance transfer correctly submitted for recordation under §§96.160 and 96.161 by the allowance transfer deadline for the control period; and
- (b) Deductions for compliance. Following the recordation, in accordance with §96.161, of CAIR NO_x allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR NO_x allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR NO_x emissions limitation for the control period, as follows:
 - (1) Until the amount of CAIR NO_x allowances deducted equals the number of tons of total nitrogen oxides emissions, determined in accordance with subpart HH of this part, from all CAIR NO_x units at the source for the control period; or
 - (2) If there are insufficient CAIR NO_x allowances to complete the deductions in paragraph (b)(1) of this section, until no more CAIR NO_x allowances available under paragraph (a) of this section remain in the compliance account.
- (c)
 - (1) Identification of CAIR NO_x allowances by serial number. The CAIR authorized account representative for a source's compliance account may request that specific CAIR NO_x allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the CAIR NO_x source and the appropriate serial numbers.
 - (2) First-in, first-out. The Administrator will deduct CAIR NO_x allowances under paragraph (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR NO_x allowances by serial number under paragraph (c)(1) of this section, on a first-in, first-out (FIFO) accounting basis in the following order:
 - (i) Any CAIR NO_x allowances that were allocated to the units at the source, in the order of recordation; and then
 - (ii) Any CAIR NO_x allowances that were allocated to any entity and transferred and recorded in the compliance account pursuant to subpart GG of this part, in the order of recordation.
- (d) Deductions for excess emissions.
 - (1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the CAIR NO_x source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CAIR NO_x allowances, allocated for the control period in the immediately following calendar year, equal to 3 times the number of tons of the source's excess emissions.
 - (2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the CAIR NO_x source or the CAIR NO_x units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or applicable State law.

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- (e) Recordation of deductions. The Administrator will record in the appropriate compliance account all deductions from such an account under paragraphs (b) and (d) of this section and subpart II.
- (f) Administrator's action on submissions.
 - (1) The Administrator may review and conduct independent audits concerning any submission under the CAIR NO_x Annual Trading Program and make appropriate adjustments of the information in the submissions.
 - (2) The Administrator may deduct CAIR NO_x allowances from or transfer CAIR NO_x allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section, and record such deductions and transfers.

§96.155 Banking.

- (a) CAIR NO_x allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.
- (b) Any CAIR NO_x allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR NO_x allowance is deducted or transferred under §96.154, §96.156, or subpart GG or II of this part.

§96.156 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR NO_x Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR authorized account representative for the account.

§96.157 Closing of general accounts.

- (a) The CAIR authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under §§96.160 and 96.161 for any CAIR NO_x allowances in the account to one or more other CAIR NO_x Allowance Tracking System accounts.
- (b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR NO_x allowances, the Administrator may notify the CAIR authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR NO_x allowances into the account under §§96.160 and 96.161 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart GG—CAIR NO_x Allowance Transfers

§96.160 Submission of CAIR NO_x allowance transfers.

A CAIR authorized account representative seeking recordation of a CAIR NO_x allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR NO_x allowance transfer shall include the following elements, in a format specified by the Administrator:

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- (a) The account numbers for both the transferor and transferee accounts;
- (b) The serial number of each CAIR NO_x allowance that is in the transferor account and is to be transferred; and
- (c) The name and signature of the CAIR authorized account representative of the transferor account and the date signed.

§96.161 EPA recordation.

- (a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CAIR NO_x allowance transfer, the Administrator will record a CAIR NO_x allowance transfer by moving each CAIR NO_x allowance from the transferor account to the transferee account as specified by the request, provided that:
 - (1) The transfer is correctly submitted under §96.160; and
 - (2) The transferor account includes each CAIR NO_x allowance identified by serial number in the transfer.
- (b) A CAIR NO_x allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR NO_x allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under §96.154 for the control period immediately before such allowance transfer deadline.
- (c) Where a CAIR NO_x allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§96.162 Notification.

- (a) Notification of recordation. Within 5 business days of recordation of a CAIR NO_x allowance transfer under §96.161, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.
- (b) Notification of non-recordation. Within 10 business days of receipt of a CAIR NO_x allowance transfer that fails to meet the requirements of §96.161(a), the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:
 - (1) A decision not to record the transfer, and
 - (2) The reasons for such non-recordation.
- (c) Nothing in this section shall preclude the submission of a CAIR NO_x allowance transfer for recordation following notification of non-recordation.

Subpart HH—Monitoring and Reporting

§96.170 General requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR NO_x unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subpart H of part 75 of this chapter. For purposes of complying with

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such requirements, the definitions in §96.102 and in §72.2 of this chapter shall apply, and the terms “affected unit,” “designated representative,” and “continuous emission monitoring system” (or “CEMS”) in part 75 of this chapter shall be deemed to refer to the terms “CAIR NO_x unit,” “CAIR designated representative,” and “continuous emission monitoring system” (or “CEMS”) respectively, as defined in §96.102. The owner or operator of a unit that is not a CAIR NO_x unit but that is monitored under §75.72(b)(2)(ii) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR NO_x unit.

- (a) Requirements for installation, certification, and data accounting. The owner or operator of each CAIR NO_x unit shall:
 - (1) Install all monitoring systems required under this subpart for monitoring NO_x mass emissions and individual unit heat input (including all systems required to monitor NO_x emission rate, NO_x concentration, stack gas moisture content, stack gas flow rate, CO₂ or O₂ concentration, and fuel flow rate, as applicable, in accordance with §§75.71 and 75.72 of this chapter);
 - (2) Successfully complete all certification tests required under §96.171 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and
 - (3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.
- (b) Compliance deadlines. Except as provided in paragraph (e) of this section, the owner or operator shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the following dates.
 - (1) For the owner or operator of a CAIR NO_x unit that commences commercial operation before July 1, 2007, by January 1, 2008.
 - (2) For the owner or operator of a CAIR NO_x unit that commences commercial operation on or after July 1, 2007, by the later of the following dates:
 - (i) January 1, 2008; or
 - (ii) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation.
 - (3) For the owner or operator of a CAIR NO_x unit for which construction of a new stack or flue or installation of add-on NO_x emission controls is completed after the applicable deadline under paragraph (b)(1), (2), (4), or (5) of this section, by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_x emissions controls.
 - (4) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, by the date specified in §96.184(b).

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- (5) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a CAIR NO_x opt-in unit under subpart II of this part, by the date on which the CAIR NO_x opt-in unit enters the CAIR NO_x Annual Trading Program as provided in §96.184(g).
- (c) Reporting data. The owner or operator of a CAIR NO_x unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for NO_x concentration, NO_x emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO_x mass emissions and heat input in accordance with §75.31(b)(2) or (c)(3) of this chapter, section 2.4 of appendix D to part 75 of this chapter, or section 2.5 of appendix E to part 75 of this chapter, as applicable.
- (d) Prohibitions.
 - (1) No owner or operator of a CAIR NO_x unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with §96.175.
 - (2) No owner or operator of a CAIR NO_x unit shall operate the unit so as to discharge, or allow to be discharged, NO_x emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.
 - (3) No owner or operator of a CAIR NO_x unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_x mass emissions discharged into the atmosphere or heat input, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.
 - (4) No owner or operator of a CAIR NO_x unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:
 - (i) During the period that the unit is covered by an exemption under §96.105 that is in effect;
 - (ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or
 - (iii) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with §96.171(d)(3)(i).
- (e) Long-term cold storage. The owner or operator of a CAIR NO_x unit is subject to the applicable provisions of part 75 of this chapter concerning units in long-term cold storage.

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§96.171 Initial certification and recertification procedures.

- (a) The owner or operator of a CAIR NO_x unit shall be exempt from the initial certification requirements of this section for a monitoring system under §96.170(a)(1) if the following conditions are met:
 - (1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and
 - (2) The applicable quality-assurance and quality-control requirements of §75.21 of this chapter and appendix B, appendix D, and appendix E to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.
- (b) The recertification provisions of this section shall apply to a monitoring system under §96.170(a)(1) exempt from initial certification requirements under paragraph (a) of this section.
- (c) If the Administrator has previously approved a petition under §75.17(a) or (b) of this chapter for apportioning the NO_x emission rate measured in a common stack or a petition under §75.66 of this chapter for an alternative to a requirement in §75.12 or §75.17 of this chapter, the CAIR designated representative shall resubmit the petition to the Administrator under §96.175(a) to determine whether the approval applies under the CAIR NO_x Annual Trading Program.
- (d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR NO_x unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (i.e., a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under §96.170(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under §75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.
 - (1) Requirements for initial certification. The owner or operator shall ensure that each continuous monitoring system under §96.170(a)(1)(including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under §75.20 of this chapter by the applicable deadline in §96.170(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with §75.20 of this chapter is required.
 - (2) Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under §96.170(a)(1) that may significantly affect the ability of the system to accurately measure or record NO_x mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of §75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with §75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with §75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any

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fuel flowmeter system, and any excepted NO_x monitoring system under appendix E to part 75 of this chapter, under §96.170(a)(1) are subject to the recertification requirements in §75.20(g)(6) of this chapter.

- (3) Approval process for initial certification and recertification. Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under §96.170(a)(1). For recertifications, replace the words “certification” and “initial certification” with the word “recertification”, replace the word “certified” with the word “recertified,” and follow the procedures in §§75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.
 - (i) Notification of certification. The CAIR designated representative shall submit to the permitting authority, the appropriate EPA Regional Office, and the Administrator written notice of the dates of certification testing, in accordance with §96.173.
 - (ii) Certification application. The CAIR designated representative shall submit to the permitting authority a certification application for each monitoring system. A complete certification application shall include the information specified in §75.63 of this chapter.
 - (iii) Provisional certification date. The provisional certification date for a monitoring system shall be determined in accordance with §75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CAIR NO_x Annual Trading Program for a period not to exceed 120 days after receipt by the permitting authority of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the permitting authority does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the permitting authority.
 - (iv) Certification application approval process. The permitting authority will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CAIR NO_x Annual Trading Program.
 - (A) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.
 - (B) Incomplete application notice. If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the

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notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section. The 120-day review period shall not begin before receipt of a complete certification application.

- (C) Disapproval notice. If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under §75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.
- (D) Audit decertification. The permitting authority or, for a CAIR NO_x opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with §96.172(b).
- (v) Procedures for loss of certification. If the permitting authority or the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:
 - (A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under §75.20(a)(4)(iii), §75.20(g)(7), or §75.21(e) of this chapter and continuing until the applicable date and hour specified under §75.20(a)(5)(i) or (g)(7) of this chapter:
 - (1) For a disapproved NO_x emission rate (i.e., NO_x-diluent) system, the maximum potential NO_x emission rate, as defined in §72.2 of this chapter.
 - (2) For a disapproved NO_x pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO_x and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.
 - (3) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO₂ concentration or the minimum potential O₂ concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.

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- (4) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.
 - (5) For a disapproved excepted NO_x monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential NO_x emission rate, as defined in §72.2 of this chapter.
- (B) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.
- (C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the permitting authority's or the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.
- (e) Initial certification and recertification procedures for units using the low mass emission excepted methodology under §75.19 of this chapter. The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under §75.19 of this chapter shall meet the applicable certification and recertification requirements in §§75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in §75.20(g) of this chapter.
- (f) Certification/recertification procedures for alternative monitoring systems. The CAIR designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator and, if applicable, the permitting authority under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of §75.20(f) of this chapter.

§96.172 Out of control periods.

- (a) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable missing data procedures in subpart D or subpart H of, or appendix D or appendix E to, part 75 of this chapter.
- (b) Audit decertification. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under §96.171 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the permitting authority or, for a CAIR NO_x opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the permitting authority or the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that

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the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in §96.171 for each disapproved monitoring system.

§96.173 Notifications.

The CAIR designated representative for a CAIR NO_x unit shall submit written notice to the permitting authority and the Administrator in accordance with §75.61 of this chapter.

§96.174 Recordkeeping and reporting.

- (a) General provisions. The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under §75.73 of this chapter, and the requirements of §96.110(e)(1).
- (b) Monitoring Plans. The owner or operator of a CAIR NO_x unit shall comply with requirements of §75.73(c) and (e) of this chapter and, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, §§96.183 and 96.184(a).
- (c) Certification Applications. The CAIR designated representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under §96.171, including the information required under §75.63 of this chapter.
- (d) Quarterly reports. The CAIR designated representative shall submit quarterly reports, as follows:
 - (1) The CAIR designated representative shall report the NO_x mass emissions data and heat input data for the CAIR NO_x unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:
 - (i) For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering January 1, 2008 through March 31, 2008;
 - (ii) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under §96.170(b), unless that quarter is the third or fourth quarter of 2007, in which case reporting shall commence in the quarter covering January 1, 2008 through March 31, 2008;
 - (iii) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the calendar quarter corresponding to the date specified in § 96.184(b); and
 - (iv) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a CAIR NO_x opt-in unit under subpart II of this part, the calendar quarter corresponding to the date on which the CAIR NO_x opt-in unit enters the CAIR NO_x Annual Trading Program as provided in § 96.184(g).
 - (2) The CAIR designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in §75.73(f) of this chapter.

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- (3) For CAIR NO_x units that are also subject to an Acid Rain emissions limitation or the CAIR NO_x Ozone Season Trading Program or CAIR SO₂ Trading Program, or Hg Budget Trading Program, quarterly reports shall include the applicable data and information required by subparts F through I of part 75 of this chapter as applicable, in addition to the NO_x mass emission data, heat input data, and other information required by this subpart.
- (e) Compliance certification. The CAIR designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:
 - (1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications; and
 - (2) For a unit with add-on NO_x emission controls and for all hours where NO_x data are substituted in accordance with §75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate NO_x emissions.

§96.175 Petitions.

- (a) Except as provided in paragraph (b)(2) of this section, the CAIR designated representative of a CAIR NO_x unit that is subject to an Acid Rain emissions limitation may submit a petition under §75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.
- (b)
 - (1) The CAIR designated representative of a CAIR NO_x unit that is not subject to an Acid Rain emissions limitation may submit a petition under §75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by both the permitting authority and the Administrator.
 - (2) The CAIR designated representative of a CAIR NO_x unit that is subject to an Acid Rain emissions limitation may submit a petition under §75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to a requirement concerning any additional continuous emission monitoring system required under §75.72 of this chapter. Application of an alternative to any such requirement is in accordance with this subpart only to the extent that the petition is approved in writing by both the permitting authority and the Administrator.

Subpart II—CAIR NO_x Opt-in Units

§96.180 Applicability.

A CAIR NO_x opt-in unit must be a unit that:

- (a) Is located in the State;

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- (b) Is not a CAIR NO_x unit under §96.104 and is not covered by a retired unit exemption under §96.105 that is in effect;
- (c) Is not covered by a retired unit exemption under §72.8 of this chapter that is in effect;
- (d) Has or is required or qualified to have a title V operating permit or other federally enforceable permit; and
- (e) Vents all of its emissions to a stack and can meet the monitoring, recordkeeping, and reporting requirements of subpart HH of this part.

§96.181 General.

- (a) Except as otherwise provided in §§96.101 through 96.104, §§96.106 through 96.108, and subparts BB and CC and subparts FF through HH of this part, a CAIR NO_x opt-in unit shall be treated as a CAIR NO_x unit for purposes of applying such sections and subparts of this part.
- (b) Solely for purposes of applying, as provided in this subpart, the requirements of subpart HH of this part to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, such unit shall be treated as a CAIR NO_x unit before issuance of a CAIR opt-in permit for such unit.

§96.182 CAIR designated representative.

Any CAIR NO_x opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, located at the same source as one or more CAIR NO_x units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR NO_x units.

§96.183 Applying for CAIR opt-in permit.

- (a) Applying for initial CAIR opt-in permit. The CAIR designated representative of a unit meeting the requirements for a CAIR NO_x opt-in unit in §96.180 may apply for an initial CAIR opt-in permit at any time, except as provided under §96.186(f) and (g), and, in order to apply, must submit the following:
 - (1) A complete CAIR permit application under §96.122;
 - (2) A certification, in a format specified by the permitting authority, that the unit:
 - (i) Is not a CAIR NO_x unit under §96.104 and is not covered by a retired unit exemption under §96.105 that is in effect;
 - (ii) Is not covered by a retired unit exemption under §72.8 of this chapter that is in effect;
 - (iii) Vents all of its emissions to a stack, and
 - (iv) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under §96.122;
 - (3) A monitoring plan in accordance with subpart HH of this part;

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- (4) A complete certificate of representation under §96.113 consistent with §96.182, if no CAIR designated representative has been previously designated for the source that includes the unit; and
 - (5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR NO_x allowances under § 96.188(b) or § 96.188(c) (subject to the conditions in §§ 96.184(h) and 96.186(g)). If allocation under § 96.188(c) is requested, this statement shall include a statement that the owners and operators of the unit intend to repower the unit before January 1, 2015 and that they will provide, upon request, documentation demonstrating such intent.
- (b) Duty to reapply.
- (1) The CAIR designated representative of a CAIR NO_x opt-in unit shall submit a complete CAIR permit application under §96.122 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or the permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.
 - (2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR NO_x opt-in unit from the CAIR NO_x Annual Trading Program in accordance with §96.186 or the unit becomes a CAIR NO_x unit under §96.104, the CAIR NO_x opt-in unit shall remain subject to the requirements for a CAIR NO_x opt-in unit, even if the CAIR designated representative for the CAIR NO_x opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

§96.184 Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under §96.183 is submitted in accordance with the following:

- (a) Interim review of monitoring plan. The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under §96.183. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_x emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with subpart HH of this part. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.
- (b) Monitoring and reporting.
 - (1) (i) If the permitting authority and the Administrator determine that the monitoring plan is sufficient under paragraph (a) of this section, the owner or operator shall monitor and report the NO_x emissions rate and the heat input of the unit and all other applicable parameters, in accordance with subpart HH of this part, starting on the date of certification of the appropriate monitoring systems under subpart HH of this part and continuing until a CAIR opt-in permit is denied under §96.184(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR NO_x Annual Trading Program in accordance with §96.186.
 - (ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the

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CAIR NO_x Annual Trading Program under §96.184(g), during which period monitoring system availability must not be less than 90 percent under subpart HH of this part and the unit must be in full compliance with any applicable State or Federal emissions or emissions-related requirements.

- (2) To the extent the NO_x emissions rate and the heat input of the unit are monitored and reported in accordance with subpart HH of this part for one or more control periods, in addition to the control period under paragraph (b)(1)(ii) of this section, during which control periods monitoring system availability is not less than 90 percent under subpart HH of this part and the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements and which control periods begin not more than 3 years before the unit enters the CAIR NO_x Annual Trading Program under §96.184(g), such information shall be used as provided in paragraphs (c) and (d) of this section.
- (c) Baseline heat input. The unit's baseline heat rate shall equal:
- (1) If the unit's NO_x emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's total heat input (in mmBtu) for the control period; or
 - (2) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, the average of the amounts of the unit's total heat input (in mmBtu) for the control periods under paragraphs (b)(1)(ii) and (2) of this section.
- (d) Baseline NO_x emission rate. The unit's baseline NO_x emission rate shall equal:
- (1) If the unit's NO_x emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's NO_x emissions rate (in lb/mmBtu) for the control period;
 - (2) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit does not have add-on NO_x emission controls during any such control periods, the average of the amounts of the unit's NO_x emissions rate (in lb/mmBtu) for the control periods under paragraphs (b)(1)(ii) and (2) of this section; or
 - (3) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit has add-on NO_x emission controls during any such control periods, the average of the amounts of the unit's NO_x emissions rate (in lb/mmBtu) for such control periods during which the unit has add-on NO_x emission controls.
- (e) Issuance of CAIR opt-in permit. After calculating the baseline heat input and the baseline NO_x emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR NO_x opt-in unit in §96.180 and meets the elements certified in §96.183(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR NO_x opt-in unit unless the source already has a compliance account.

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- (f) Issuance of denial of CAIR opt-in permit. Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR NO_x opt-in unit in §96.180 or meets the elements certified in §96.183(a)(2), the permitting authority will issue a denial of a CAIR opt-in permit for the unit.
- (g) Date of entry into CAIR NO_x Annual Trading Program. A unit for which an initial CAIR opt-in permit is issued by the permitting authority shall become a CAIR NO_x opt-in unit, and a CAIR NO_x unit, as of the later of January 1, 2009 or January 1 of the first control period during which such CAIR opt-in permit is issued.
- (h) Repowered CAIR NO_x opt-in unit.
 - (1) If CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR NO_x opt-in unit of CAIR NO_x allowances under §96.188(c) and such unit is repowered after its date of entry into the CAIR NO_x Annual Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR NO_x opt-in unit replacing the original CAIR NO_x opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.
 - (2) Notwithstanding paragraphs (c) and (d) of this section, as of the date of start-up under paragraph (h)(1) of this section, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline NO_x emission rate as the original CAIR NO_x opt-in unit, and the original CAIR NO_x opt-in unit shall no longer be treated as a CAIR NO_x opt-in unit or a CAIR NO_x unit.

§96.185 CAIR opt-in permit contents.

- (a) Each CAIR opt-in permit will contain:
 - (1) All elements required for a complete CAIR permit application under §96.122;
 - (2) The certification in §96.183(a)(2);
 - (3) The unit's baseline heat input under §96.184(c);
 - (4) The unit's baseline NO_x emission rate under §96.184(d);
 - (5) A statement whether the unit is to be allocated CAIR NO_x allowances under §96.188(b) or §96.188(c) (subject to the conditions in §§96.184(h) and 96.186(g));
 - (6) A statement that the unit may withdraw from the CAIR NO_x Annual Trading Program only in accordance with §96.186; and
 - (7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of §96.187.
- (b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under §96.102 and, upon recordation by the Administrator under subpart FF or GG of this part or this subpart, every allocation, transfer, or deduction of CAIR NO_x allowances to or from the compliance account of the source that includes a CAIR NO_x opt-in unit covered by the CAIR opt-in permit.

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- (c) The CAIR opt-in permit shall be included, in a format specified by the permitting authority, in the CAIR permit for the source where the CAIR NO_x opt-in unit is located and in a title V operating permit or other federally enforceable permit for the source.

§96.186 Withdrawal from CAIR NO_x Annual Trading Program.

Except as provided under paragraph (g) of this section, a CAIR NO_x opt-in unit may withdraw from the CAIR NO_x Annual Trading Program, but only if the permitting authority issues a notification to the CAIR designated representative of the CAIR NO_x opt-in unit of the acceptance of the withdrawal of the CAIR NO_x opt-in unit in accordance with paragraph (d) of this section.

- (a) Requesting withdrawal. In order to withdraw a CAIR NO_x opt-in unit from the CAIR NO_x Annual Trading Program, the CAIR designated representative of the CAIR NO_x opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of December 31 of a specified calendar year, which date must be at least 4 years after December 31 of the year of entry into the CAIR NO_x Annual Trading Program under §96.184(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.
- (b) Conditions for withdrawal. Before a CAIR NO_x opt-in unit covered by a request under paragraph (a) of this section may withdraw from the CAIR NO_x Annual Trading Program and the CAIR opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:
 - (1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR NO_x opt-in unit must meet the requirement to hold CAIR NO_x allowances under §96.106(c) and cannot have any excess emissions.
 - (2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of the source that includes the CAIR NO_x opt-in unit CAIR NO_x allowances equal in amount to and allocated for the same or a prior control period as any CAIR NO_x allowances allocated to the CAIR NO_x opt-in unit under §96.188 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR NO_x units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR NO_x opt-in unit may submit a CAIR NO_x allowance transfer for any remaining CAIR NO_x allowances to another CAIR NO_x Allowance Tracking System in accordance with subpart GG of this part.
- (c) Notification.
 - (1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of CAIR NO_x allowances required), the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_x opt-in unit of the acceptance of the withdrawal of the CAIR NO_x opt-in unit as of midnight on December 31 of the calendar year for which the withdrawal was requested.
 - (2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_x opt-in unit that the CAIR NO_x opt-in unit's request to withdraw is denied. Such CAIR NO_x opt-in unit shall continue to be a CAIR NO_x opt-in unit.
- (d) Permit amendment. After the permitting authority issues a notification under paragraph (c)(1) of this section that the requirements for withdrawal have been met, the permitting authority will

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revise the CAIR permit covering the CAIR NO_x opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (c)(1) of this section. The unit shall continue to be a CAIR NO_x opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR NO_x Annual Trading Program concerning any control periods for which the unit is a CAIR NO_x opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

- (e) Reapplication upon failure to meet conditions of withdrawal. If the permitting authority denies the CAIR NO_x opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.
- (f) Ability to reapply to the CAIR NO_x Annual Trading Program. Once a CAIR NO_x opt-in unit withdraws from the CAIR NO_x Annual Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under §96.183 for such CAIR NO_x opt-in unit before the date that is 4 years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under §96.184.
- (g) Inability to withdraw. Notwithstanding paragraphs (a) through (f) of this section, a CAIR NO_x opt-in unit shall not be eligible to withdraw from the CAIR NO_x Annual Trading Program if the CAIR designated representative of the CAIR NO_x opt-in unit requests, and the permitting authority issues a CAIR NO_x opt-in permit providing for, allocation to the CAIR NO_x opt-in unit of CAIR NO_x allowances under §96.188(c).

§96.187 Change in regulatory status.

- (a) Notification. If a CAIR NO_x opt-in unit becomes a CAIR NO_x unit under §96.104, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR NO_x opt-in unit's regulatory status, within 30 days of such change.
- (b) Permitting authority's and Administrator's actions.
 - (1) If a CAIR NO_x opt-in unit becomes a CAIR NO_x unit under §96.104, the permitting authority will revise the CAIR NO_x opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under §96.123, and remove the CAIR opt-in permit provisions as of the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under §96.104.
 - (2) (i) The Administrator will deduct from the compliance account of the source that includes the CAIR NO_x opt-in unit that becomes a CAIR NO_x unit under §96.104, CAIR NO_x allowances equal in amount to and allocated for the same or a prior control period as:
 - (A) any CAIR NO_x allowances allocated to the CAIR NO_x opt-in unit under §96.188 for any control period after the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under §96.104; and
 - (B) If the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under §96.104 is not December 31, the CAIR NO_x allowances allocated to the CAIR NO_x opt-in unit under §96.188 for the control period that includes the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under §96.104, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR NO_x opt-in unit becomes a CAIR

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NO_x unit under §96.104 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

- (ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR NO_x unit that becomes a CAIR NO_x unit under §96.104 contains the CAIR NO_x allowances necessary for completion of the deduction under paragraph (b)(2)(i) of this section.
- (3) (i) For every control period after the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 96.104, the CAIR NO_x opt-in unit will be allocated CAIR NO_x allowances under § 96.142.
- (ii) If the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under §96.104 is not December 31, the following amount of CAIR NO_x allowances will be allocated to the CAIR NO_x opt-in unit (as a CAIR NO_x unit) under §96.142 for the control period that includes the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under §96.104:
 - (A) The amount of CAIR NO_x allowances otherwise allocated to the CAIR NO_x opt-in unit (as a CAIR NO_x unit) under §96.142 for the control period multiplied by;
 - (B) The ratio of the number of days, in the control period, starting with the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under §96.104, divided by the total number of days in the control period; and
 - (C) Rounded to the nearest whole allowance as appropriate.

§96.188 CAIR NO_x allowance allocations to CAIR NO_x opt-in units.

(a) Timing requirements.

- (1) When the CAIR opt-in permit is issued under §96.184(e), the permitting authority will allocate CAIR NO_x allowances to the CAIR NO_x opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR NO_x opt-in unit enters the CAIR NO_x Annual Trading Program under §96.184(g), in accordance with paragraph (b) or (c) of this section.
 - (2) By no later than October 31 of the control period after the control period in which a CAIR opt-in unit enters the CAIR NO_x Annual Trading Program under §96.184(g) and October 31 of each year thereafter, the permitting authority will allocate CAIR NO_x allowances to the CAIR NO_x opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR NO_x opt-in unit, in accordance with paragraph (b) or (c) of this section.
- (b) Calculation of allocation. For each control period for which a CAIR NO_x opt-in unit is to be allocated CAIR NO_x allowances, the permitting authority will allocate in accordance with the following procedures:
- (1) The heat input (in mmBtu) used for calculating the CAIR NO_x allowance allocation will be the lesser of:
 - (i) The CAIR NO_x opt-in unit's baseline heat input determined under §96.184(c); or

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- (ii) The CAIR NO_x opt-in unit's heat input, as determined in accordance with subpart HH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR NO_x opt-in unit enters the CAIR NO_x Annual Trading Program under §96.184(g).
- (2) The NO_x emission rate (in lb/mmBtu) used for calculating CAIR NO_x allowance allocations will be the lesser of:
 - (i) The CAIR NO_x opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under §96.184(d) and multiplied by 70 percent; or
 - (ii) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x opt-in unit at any time during the control period for which CAIR NO_x allowances are to be allocated.
- (3) The permitting authority will allocate CAIR NO_x allowances to the CAIR NO_x opt-in unit in an amount equaling the heat input under paragraph (b)(1) of this section, multiplied by the NO_x emission rate under paragraph (b)(2) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.
- (c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under §96.183(a)(5)) providing for, allocation to a CAIR NO_x opt-in unit of CAIR NO_x allowances under this paragraph (subject to the conditions in §§96.184(h) and 96.186(g)), the permitting authority will allocate to the CAIR NO_x opt-in unit as follows:
 - (1) For each control period in 2009 through 2014 for which the CAIR NO_x opt-in unit is to be allocated CAIR NO_x allowances,
 - (i) The heat input (in mmBtu) used for calculating CAIR NO_x allowance allocations will be determined as described in paragraph (b)(1) of this section.
 - (ii) The NO_x emission rate (in lb/mmBtu) used for calculating CAIR NO_x allowance allocations will be the lesser of:
 - (A) The CAIR NO_x opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under §96.184(d); or
 - (B) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x opt-in unit at any time during the control period in which the CAIR NO_x opt-in unit enters the CAIR NO_x Annual Trading Program under §96.184(g).
 - (iii) The permitting authority will allocate CAIR NO_x allowances to the CAIR NO_x opt-in unit in an amount equaling the heat input under paragraph (c)(1)(i) of this section, multiplied by the NO_x emission rate under paragraph (c)(1)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.
 - (2) For each control period in 2015 and thereafter for which the CAIR NO_x opt-in unit is to be allocated CAIR NO_x allowances,
 - (i) The heat input (in mmBtu) used for calculating the CAIR NO_x allowance allocations will be determined as described in paragraph (b)(1) of this section.

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- (ii) The NO_x emission rate (in lb/mmBtu) used for calculating the CAIR NO_x allowance allocation will be the lesser of:
 - (A) 0.15 lb/mmBtu;
 - (B) The CAIR NO_x opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under §96.184(d); or
 - (C) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x opt-in unit at any time during the control period for which CAIR NO_x allowances are to be allocated.
- (iii) The permitting authority will allocate CAIR NO_x allowances to the CAIR NO_x opt-in unit in an amount equaling the heat input under paragraph (c)(2)(i) of this section, multiplied by the NO_x emission rate under paragraph (c)(2)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.
- (d) Recordation.
 - (1) The Administrator will record, in the compliance account of the source that includes the CAIR NO_x opt-in unit, the CAIR NO_x allowances allocated by the permitting authority to the CAIR NO_x opt-in unit under paragraph (a)(1) of this section.
 - (2) By December 1 of the control period in which a CAIR NO_x opt-in unit enters the CAIR NO_x Annual Trading Program under §96.184(g) and December 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR NO_x opt-in unit, the CAIR NO_x allowances allocated by the permitting authority to the CAIR NO_x opt-in unit under paragraph (a)(2) of this section.

Subparts JJ—ZZ [Reserved]

Authority: *T.C.A. §§68-201-105 and 4-5-201 et. seq.*

This notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of October, 2006. (10-21-06)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400 DIVISION OF AIR POLLUTION CONTROL

There will be a public hearing before the Technical Secretary of the Tennessee Air Pollution Control Board to consider the promulgation of an amendment to the Tennessee Air Pollution Control Regulations and the State Implementation Plan pursuant to Tennessee Code Annotated, Section 68-201-105. The comments received at this hearing will be presented to the Tennessee Air Pollution Control Board for their consideration in regards to the proposed regulatory amendment. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-201 et. seq. and will take place in the 9th Floor Conference Room, Division of Air Pollution Control, located at 9th Floor L&C Annex, 401 Church Street, Nashville, Tennessee 37243 at 9:00 a.m. on the 19th day of December, 2006.

Written comments will be included in the hearing records if received by the close of business on December 19, 2006, at the office of the Technical Secretary, Tennessee Air Pollution Control Board, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531. Additionally, comments may be submitted via attachments through electronic mail until the close of business on December 19, 2006.

Any individuals with disabilities who wish to participate in these proceedings or to review these filings should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be in person, by writing, telephone, or other means, and should be made no less than ten (10) days prior to December 19, 2006, or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator, 12th Floor L & C Tower, 401 Church Street, Nashville TN 37243, (615) 532-0207. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

If you have any questions about the origination of this rule change, you may contact Travis Blake at 615-532-0617. For complete copies of the text of the notice, please contact Travis Blake, Department of Environment and Conservation, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243. 615-532-0617

SUMMARY AND SUBSTANCE OF PROPOSED RULES

SUMMARY

Rule 1200-3-27-.11 of the Tennessee Air Pollution Control Regulations (CAIR NO_x Ozone Season Trading Program) is being amended. This rule requires the owner/operators of affected electric generating units (EGUs) and industrial boilers (non-EGUs) to comply with ozone season NO_x emission limitations by limiting emissions from these sources, or by purchasing emission credits through a cap-and-trade program. The proposed changes will update the language of EPA's Federal rule (70 FR 25362, May 12, 2005), and the State-specific revisions to this rule, with EPA's additions and corrections to the Federal rule language (71 FR 25386, April 28, 2006). Tennessee is also proposing to remove the opt-out provisions for non-EGUs (1200-3-27-.11(2)(a)4 in the current rule), and to allow future updates of the allowance allocation method for non-EGUs (1200-3-27-.11(2)(c)2.(ii)(I)).

Tennessee is also proposing to revise the non-EGU allowance allocation method specified in item (I) of subpart (2)(c)2.(ii) of rule 1200-3-27-.11. Specifically, Tennessee is proposing several alternative allowance allocation methods for non-EGUs to reallocate or retire 938 tons of surplus CAIR NO_x Ozone Season allowances that were allocated to retired units. Tennessee is not proposing to reduce the existing allocations to non-EGUs or to reduce the existing new unit set-aside below the current value of 278 tons. These revisions would become effective for the 2009 ozone season, and for each subsequent ozone season. Tennessee is soliciting public comments on the following allowance allocation methods:

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Allocate 938 additional tons of CAIR NO_x Ozone Season allowances to existing sources at the beginning of each ozone season. Maintain the new unit set-aside at 5% of the total non-EGU budget (278 tons).

Allocate 1,216 tons (278 tons + 938 tons) of CAIR NO_x Ozone Season allowances into the new unit set-aside. At the end of each ozone season, any unused allowances in the new-unit set-aside would be redistributed among existing NO_x Budget sources.

Allocate 1,216 tons of CAIR NO_x Ozone Season allowances into the new unit set-aside. At the end of each ozone season, a portion of the unused allowances in the new-unit set-aside (no less than 278 tons of NO_x allowances, if available) would be redistributed among existing NO_x Budget sources, and the remainder of allowances would be retired. Once retired, an allowance would no longer be available, but the allocation method could be revised to make these allowances available for future years.

Allocate 938 tons of CAIR NO_x Ozone Season allowances as “to be retired” during each ozone season. Once retired, an allowance would no longer be available, but the allocation method could be revised to make these allowances available for future years.

Request that EPA reduce Tennessee’s ozone season NO_x budget for non-EGUs by 938 tons. These allowances would no longer be available for use, and the allocation method could not be revised to make these allowances available for future years.

Interested parties may submit comments on other allocation or retirement methods not listed above.

Only the portions of the rule affected by these amendments are open to public comment.

SUBSTANCE OF PROPOSED RULE

CHAPTER 1200-3-27

CAIR NO_x OZONE SEASON TRADING PROGRAM

1200-3-27-.11 CAIR NO_x OZONE SEASON TRADING PROGRAM

1200-3-27-.11 CAIR NO_x OZONE SEASON TRADING PROGRAM

- (1) The provisions of this rule supersede the provisions of 1200-3-27-.06 (NO_x Budget Trading Program for State Implementation Programs) as follows:
 - (a) The provisions of this rule supersede all requirements of 1200-3-27-.06 for the control period beginning in 2009, and for each control period thereafter.
 - (b) The provisions of 1200-3-27-.06 shall not apply to the control period beginning in 2009 and any control period thereafter.
- (2) The provisions of 40 CFR Part 96 concerning the CAIR NO_x Ozone Season Trading Program are hereby adopted by reference with the following revisions:
 - (a) The provisions of Sec. 96.304 as adopted for Tennessee are revised to read as follows:

Sec. 96.304 Applicability.

The following units in a State shall be CAIR NO_x Ozone Season units, and any source that includes one or more such units shall be a CAIR NO_x Ozone Season source, subject to the requirements of this rule:

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1. Except as provided in part 2. of this subparagraph:
 - (i) Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.
 - (ii) If a stationary boiler or stationary combustion turbine that, under subpart (i) of this part, is not a CAIR NO_x Ozone Season unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR NO_x Ozone Season unit as provided in subpart (i) of this part on the first date on which it both combusts fossil fuel and serves such generator.
2. The units in a State that meet the requirements set forth in item 2.(i)(I), 2.(ii)(I), or 2.(ii)(II) of this part shall not be CAIR NO_x Ozone Season units:
 - (i) (I) Any unit that is a CAIR NO_x Ozone Season unit under subpart 1.(i) or (ii) of this part:
 - I. Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and
 - II. Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.
 - (II) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of item 2.(i)(I) of this subparagraph for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of subitem 2.(i)(I)II. of this subparagraph.
- (ii) (I) Any unit that is a CAIR NO_x Ozone Season unit under subpart 1.(i) or (ii) of this subparagraph commencing operation before January 1, 1985:
 - I. Qualifying as a solid waste incineration unit; and
 - II. With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).
- (II) Any unit that is a CAIR NO_x Ozone Season unit under subpart 1.(i) or (ii) of this subparagraph commencing operation on or after January 1, 1985:

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- I. Qualifying as a solid waste incineration unit; and
 - II. With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).
- (III) If a unit qualifies as a solid waste incineration unit and meets the requirements of item 2.(ii)(I) or (II) of this subparagraph for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.
2. Any stationary boiler or stationary combustion turbine that is not a unit under part 1. of this subparagraph and that meets each of the following requirements:
 - (i) The stationary boiler's or stationary combustion turbine's maximum design heat input is greater than 250 mmBtu/hr, and;
 - (ii) The stationary boiler or stationary combustion turbine combusts, or will combust during any year, fossil fuel in the following amounts:
 - I. Alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or
 - II. Alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year.
- (b) The provisions of Sec. 96.340 as adopted for Tennessee are revised to read as follows:
- Sec. 96.340 State trading budgets.
1. The State trading budget for annual allocations of CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units identified in part (2)(a)1. of this rule for the control periods in 2009 through 2014 is 22,842 tons/season, and for the control period in 2015 and thereafter is 19,035 tons/season.
 2. The State trading budget for annual allocations of CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units identified in part (2)(a)2. of this rule for the control period in 2009 and thereafter is 5,666 tons/season.
- (c) The provisions of Sec. 96.342 as adopted for Tennessee are revised to read as follows:
- Sec. 96.342 CAIR NO_x Ozone Season allowance allocations.

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1. NO_x Ozone Season allowance allocations for CAIR NO_x Ozone Season units identified in part (2)(a)1. of this rule:
 - (i) (I) The baseline heat input (in mmBtu) used with respect to CAIR NO_x Ozone Season allowance allocations under subpart (ii) of this part for each CAIR NO_x Ozone Season unit identified in parts (2)(a)1. and (2)(a)2. of this rule will be:
 - I. For units commencing operation before January 1, 2001 the average of the 3 highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:
 - A. If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;
 - B. If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and
 - C. If the unit is not subject to section (i)(I)I.A. or B. of this subpart , the unit's control period heat input for such year is multiplied by 40 percent.
 - II. For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.
 - (II) I. A unit's control period heat input, and a unit's status as coal-fired or oil-fired, for a calendar year under subitem (i)(I)I. of this part , and a unit's total tons of NO_x emissions during a control period in a calendar year under item (iii)(III) of this part, will be determined in accordance with part 75 of this chapter, to the extent the unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.
 - II. A unit's converted control period heat input for a calendar year specified under subitem (i)(I)II. of this part equals:
 - A. Except as provided in section (i)(II)II.B. or C. of this part, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, and divided by 1,000,000 Btu/mmBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;

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- B. For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/mmBtu; or
 - C. For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,414 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.
- (ii) (I) For each control period in 2009 and thereafter, the permitting authority will allocate to all CAIR NO_x Ozone Season units identified in parts (2)(a)1. and (2)(a)2. of this rule that have a baseline heat input (as determined under subpart (i) of this part) a total amount of CAIR NO_x Ozone Season allowances equal to 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the tons of NO_x emissions in the State trading budget under part (b)1. of this paragraph (except as provided in subpart (iv) of this part).
 - (II) The permitting authority will allocate CAIR NO_x Ozone Season allowances to each CAIR NO_x Ozone Season unit under item (ii)(I) of this part in an amount determined by multiplying the total amount of CAIR NO_x Ozone Season allowances allocated under item (ii)(I) of this part by the ratio of the baseline heat input of such CAIR NO_x Ozone Season unit to the total amount of baseline heat input of all such CAIR NO_x Ozone Season units in the State and rounding to the nearest whole allowance as appropriate.
- (iii) For each control period in 2009 and thereafter, the permitting authority will allocate CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units identified in part (2)(a)1. of this rule that are not allocated CAIR NO_x Ozone Season allowances under subpart (ii) of this part because the units do not yet have a baseline heat input under subpart (i) of this part or because the units have a baseline heat input but all CAIR NO_x Ozone Season allowances available under subpart (ii) of this part for the control period are already allocated, in accordance with the following procedures:
 - (I) The permitting authority will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_x Ozone Season allowances equal to 5 percent for a control period in 2009 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of tons of NO_x emissions in the State trading budget under § 96.340.
 - (II) The CAIR designated representative of such a CAIR NO_x Ozone Season unit may submit to the permitting authority a request, in a format specified

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by the permitting authority, to be allocated CAIR NO_x Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x Ozone Season allowances under subpart (ii) of this part. A separate CAIR NO_x Ozone Season allowance allocation request for each control period for which CAIR NO_x allowances are sought must be submitted on or before February 1 of such control period and after the date on which the CAIR NO_x Ozone Season unit commences commercial operation.

- (III) In a CAIR NO_x Ozone Season allowance allocation request under item (iii)(II) of this part, the CAIR designated representative may request for a control period CAIR NO_x Ozone Season allowances in an amount not exceeding the CAIR NO_x Ozone Season unit's total tons of NO_x emissions during the control period immediately before such control period.
- (IV) The permitting authority will review each CAIR NO_x Ozone Season allowance allocation request under item (iii)(II) of this part and will allocate CAIR NO_x Ozone Season allowances for each control period pursuant to such request as follows:
 - I. The permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of items (iii)(II) and (III) of this part.
 - II. On or after February 1 before the control period, the permitting authority will determine the sum of the CAIR NO_x Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part) in all allowance allocation requests accepted under subitem (iii)(IV)I. of this part for the control period.
 - III. If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under subitem (iii)(IV)II. of this part, then the permitting authority will allocate the amount of CAIR NO_x Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part) to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under subitem (iii)(IV)I. of this part.
 - IV. If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is less than the sum under subitem (iii)(IV)II. of this part, then the permitting authority will allocate to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under subitem (iii)(IV)I. of this part the amount of the CAIR NO_x Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part), multiplied by the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under subitem (iii)(IV)II. of this part, and rounded to the nearest whole allowance as appropriate.

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- V. The permitting authority will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x Ozone Season allowances (if any) allocated for the control period to the CAIR NO_x Ozone Season unit covered by the request.
- (iv) If, after completion of the procedures under item (iii)(IV) of this part for a control period, any unallocated CAIR NO_x Ozone Season allowances remain in the new unit set-aside for the control period, the permitting authority will allocate to each CAIR NO_x Ozone Season unit identified in parts (2)(a)1. and (2)(a)2. of this rule that was allocated CAIR NO_x Ozone Season allowances under subpart (ii) of this part an amount of CAIR NO_x Ozone Season allowances equal to the total amount of such remaining unallocated CAIR NO_x Ozone Season allowances, multiplied by the unit's allocation under subpart (ii) of this part, divided by 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the amount of tons of NO_x emissions in the State trading budget under § 96.340, and rounded to the nearest whole allowance as appropriate.
2. NO_x Ozone Season allowance allocations for CAIR NO_x Ozone Season units identified in part (2)(a)2. of this rule:
- (i) For all CAIR NO_x Ozone Season units identified in part (2)(a)2. of this rule, the heat input used for calculating NO_x allowance allocations for each CAIR Ozone Season NO_x unit shall be:
- (I) The heat input (in mmBtu) used for calculating NO_x Ozone Season allowance allocations shall be the unit's heat input for the control period that is four years before the control period for which the NO_x allocation is being calculated.
- (II) A unit's control period heat input and a unit's total tons of NO_x emissions during a control period in a calendar year under subpart 4.(iii) of this subparagraph, will be determined in accordance with 40 CFR part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR part 75 for the year, or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR part 75 for the year.
- (ii) For all CAIR NO_x Ozone Season units identified in part (2)(a)2. of this rule, the permitting authority will allocate CAIR NO_x Ozone Season allowances as follows:
- (I) For each control period from 2009 until 2018, the permitting authority will allocate CAIR NO_x Ozone Season allowances in the amounts specified in Board Order [INSERT BOARD ORDER NUMBER] , approved by the Tennessee Air Pollution Control Board on [INSERT DATE OF ADOPTION OF BOARD ORDER] .
- (II) For the control periods following 2018, the permitting authority will allocate CAIR NO_x Ozone Season allowances in a state implementation plan to be submitted to EPA for approval.
- (iii) For each control period in 2009 and thereafter, the permitting authority will al-

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locate CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units identified in part (2)(a)2. of this rule that are not allocated CAIR NO_x Ozone Season allowances under subpart (ii) of this part because the units do not yet have a baseline heat input under subpart (i) of this part or because the units have a baseline heat input but all CAIR NO_x Ozone Season allowances available under subpart (ii) of this part for the control period are already allocated, in accordance with the following procedures:

- (I) The permitting authority will establish a separate new unit set-aside for each control period. The set-aside for CAIR NO_x Ozone Season units identified in part (2)(a)2. of this rule shall be separate from the set-aside for CAIR NO_x Ozone Season Units identified in parts (2)(a)1. and (2)(a)2. of this rule. For CAIR NO_x Ozone Season Units identified in part (2)(a)2. of this rule, the allocation set-aside for new source growth will be the NO_x allowances remaining in the state trading program budget for CAIR NO_x Ozone Season units identified in part (2)(a)2. of this rule after allocations are set for all CAIR NO_x Ozone Season units under part (b)2. of this paragraph. For CAIR NO_x Ozone Season Units identified in part (2)(a)2. of this rule, the new unit set-aside will be established as follows:
 - I. For each control period from 2009 until 2018, the new unit set-aside is established as the State emission budget established in subparagraph (b)2. of this rule minus the number of NO_x allowances allocated in item (ii)(I) of this part.
 - II. For the control periods following 2018, the new unit set-aside will be established in a state implementation plan to be submitted to EPA for approval.
- (II) The CAIR designated representative of such a CAIR NO_x Ozone Season unit may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated CAIR NO_x Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x Ozone Season allowances under subpart (ii) of this part. A separate CAIR NO_x Ozone Season allowance allocation request for each control period for which CAIR NO_x allowances are sought must be submitted on or before February 1 of such control period and after the date on which the CAIR NO_x Ozone Season unit commences commercial operation.
- (III) In a CAIR NO_x Ozone Season allowance allocation request under item (iii)(II) of this part, the CAIR designated representative may request for a control period CAIR NO_x Ozone Season allowances in an amount not exceeding any of the three following limits:
 - I. 0.15 lb/mmBtu;
 - II. The allowable NO_x emissions under any state or federal construction or operating permit;

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- III. Any provision in or that has been submitted to the EPA for amendment to the state implementation plan.
 - IV. The emission limits indicated in subitems I. through III. above shall be converted to tons by multiplying the emission limit by the heat input indicated in subpart 2.(i) of this subparagraph, dividing by 2,000, and rounding to the nearest whole number as appropriate.
- (IV) The permitting authority will review each CAIR NO_x Ozone Season allowance allocation request under item (iii)(II) of this part and will allocate CAIR NO_x Ozone Season allowances for each control period pursuant to such request as follows:
- I. The permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of items (iii)(II) and (III) of this part.
 - II. On or after February 1 before the control period, the permitting authority will determine the sum of the CAIR NO_x Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part) in all allowance allocation requests accepted under subitem (iii)(IV)I. of this part for the control period.
 - III. If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under subitem (iii)(IV)II. of this part, then the permitting authority will allocate the amount of CAIR NO_x Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part) to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under subitem (iii)(IV)I. of this part.
 - IV. If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is less than the sum under subitem (iii)(IV)II. of this part , then the permitting authority will allocate to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under subitem (iii)(IV)I. of this part the amount of the CAIR NO_x Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part), multiplied by the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under, and rounded to the nearest whole allowance as appropriate.
 - V. The permitting authority will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x Ozone Season allowances (if any) allocated for the control period to the CAIR NO_x Ozone Season unit covered by the request.
- (iv) If, after completion of the procedures under item (iii)(IV) of this part for a control period, any unallocated CAIR NO_x Ozone Season allowances remain in the new unit set-aside for the control period, the permitting authority will allocate to each CAIR NO_x Ozone Season unit that was allocated CAIR NO_x Ozone Season al-

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allowances under subpart (ii) of this part an amount of CAIR NO_x Ozone Season allowances using the following formula and rounding to the nearest whole NO_x allowance as appropriate:

$$\text{Unit's share of NO}_x \text{ allowances remaining in allocation set-aside} = \frac{(\text{Total NO}_x \text{ allowances remaining in allocation set-aside}) \times (\text{Unit's NO}_x \text{ allowance allocation})}{\div (\text{State trading program budget excluding allocation set-aside})}$$

where:

“Total NO_x allowances remaining in allocation set-aside” is the total number of NO_x allowances remaining in the allocation set-aside for the unit type for the control period to which the allocation set-aside applies;

“Unit’s NO_x allowance allocation” is the number of NO_x allowances allocated under item 2.(ii) of this subparagraph to the unit for the control period to which the allocation set-aside applies; and

“State trading program budget excluding allocation set-aside” is the State trading program budget apportioned to the unit type for the control period to which the allocation set-aside applies minus the allocation set-aside.

- (v) By October 31, 2009 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the NO_x allowance allocations for any NO_x allowances remaining in the applicable allocation set-aside for the prior control period.

(3) PART 96--CAIR NO_x Ozone Season Trading Program

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Subpart AAAA—CAIR NO_x Ozone Season Trading Program General Provisions

§ 96.301 Purpose.

This subpart and subparts BBBB through IIII establish the model rule comprising general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the State Clean Air Interstate Rule (CAIR) NO_x Ozone Season Trading Program, under section 110 of the Clean Air Act and § 51.123 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides. The owner or operator of a unit or a source shall comply with the requirements of this subpart and subparts BBBB through IIII as a matter of federal law only if the State with jurisdiction over the unit and the source incorporates by reference such subparts or otherwise adopts the requirements of such subparts in accordance with § 51.123(aa)(1) or (2), of this chapter, the State submits to the Administrator one or more revisions of the State implementation plan that include such adoption, and the Administrator approves such revisions. If the State adopts the requirements of such subparts in accordance with § 51.123(aa)(1) or (2), (bb), or (dd) of this chapter, then the State authorizes the Administrator to assist the State in implementing the CAIR NO_x Ozone Season Trading Program by carrying out the functions set forth for the Administrator in such subparts.

§ 96.302 Definitions.

The terms used in this subpart and subparts BBBB through IIII shall have the meanings set forth in this section as follows:

Account number means the identification number given by the Administrator to each CAIR NO_x Ozone Season Allowance Tracking System account.

Acid Rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

Acid Rain Program means a multistate sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or allocation means, with regard to CAIR NO_x Ozone Season allowances, the determination by a permitting authority or the Administrator of the amount of such CAIR NO_x Ozone Season allowances to be initially credited to a CAIR NO_x Ozone Season unit, a new unit set-aside, or other entity.

Allowance transfer deadline means, for a control period, midnight of November 30 (if it is a business day), or midnight of the first business day thereafter (if November 30 is not a business day) immediately following the control period and is the deadline by which a CAIR NO_x Ozone Season allowance transfer must be submitted for recordation in a CAIR NO_x Ozone Season source's compliance account in order to be used to meet the source's CAIR NO_x Ozone Season emissions limitation for such control period in accordance with § 96.354.

Alternate CAIR designated representative means, for a CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source in accordance with subparts BBBB

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and IIII of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR NO_x Ozone Season Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR NO_x source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_x Annual Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR SO₂ source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR SO₂ Trading Program. If the CAIR NO_x Ozone Season source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program. If the CAIR NO_x Ozone Season source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate Hg designated representative under the Hg Budget Trading Program.

Automated data acquisition and handling system or DAHS means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under subpart HHHH of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart HHHH of this part.

Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

CAIR authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with subparts BBBB, FFFF, and IIII of this part, to transfer and otherwise dispose of CAIR NO_x Ozone Season allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

CAIR designated representative means, for a CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with subparts BBBB and IIII of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO_x Ozone Season Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR NO_x source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_x Annual Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR SO₂ source, then this natural person shall be the same person as the CAIR designated representative under the CAIR SO₂ Trading Program. If the CAIR NO_x Ozone Season source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program. If the CAIR NO_x Ozone Season source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the Hg designated representative under the Hg Budget Trading Program.

CAIR NO_x Annual Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AA through II of this part and § 51.123 of this chapter or established by the Administrator in accordance with subparts AA through II of part 97 of this chapter and §§51.123(p) and 52.35 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

CAIR NO_x Ozone Season allowance means a limited authorization issued by a permitting author-

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ity or the Administrator under provisions of a State implementation plan that are approved under §51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), (dd), or (ee) of this chapter, or under subpart EEEE of part 97 or §97.388 of this chapter, to emit one ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO_x Ozone Season Trading Program or a limited authorization issued by a permitting authority for a control period during 2003 through 2008 under the NO_x Budget Trading Program in accordance with §51.121(p) of this chapter to emit one ton of nitrogen oxides during a control period, provided that the provision in §51.121(b)(2)(ii)(E) of this chapter shall not be used in applying this definition and the limited authorization shall not have been used to meet the allowance-holding requirement under the NO_x Budget Trading Program. An authorization to emit nitrogen oxides that is not issued under provisions of a State implementation plan approved under §51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), (dd), or (ee) of this chapter or subpart EEEE of part 97 or §97.388 of this chapter or under the NO_x Budget Trading Program as described in the prior sentence shall not be a CAIR NO_x Ozone Season allowance.

CAIR NO_x Ozone Season allowance deduction or deduct CAIR NO_x Ozone Season allowances means the permanent withdrawal of CAIR NO_x Ozone Season allowances by the Administrator from a compliance account, e. g., in order to account for a specified number of tons of total nitrogen oxides emissions from all CAIR NO_x Ozone Season units at a CAIR NO_x Ozone Season source for a control period, determined in accordance with subpart HHHH of this part, or to account for excess emissions.

CAIR NO_x Ozone Season Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of CAIR NO_x Ozone Season allowances under the CAIR NO_x Ozone Season Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

CAIR NO_x Ozone Season Allowance Tracking System account means an account in the CAIR NO_x Ozone Season Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR NO_x Ozone Season allowances.

CAIR NO_x Ozone Season allowances held or hold CAIR NO_x Ozone Season allowances means the CAIR NO_x Ozone Season allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FFFF, GGGG, and IIII of this part, in a CAIR NO_x Ozone Season Allowance Tracking System account.

CAIR NO_x Ozone Season emissions limitation means, for a CAIR NO_x Ozone Season source, the tonnage equivalent, in NO_x emissions in a control period, of the CAIR NO_x Ozone Season allowances available for deduction for the source under §96.354(a) and (b) for the control period.

CAIR NO_x Ozone Season Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAAA through IIII of this part and § 51.123 of this chapter or established by the Administrator in accordance with subparts AAAA through IIII of part 97 of this chapter and §§51.123(ee) and 52.35 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

CAIR NO_x Ozone Season source means a source that includes one or more CAIR NO_x Ozone Season units.

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CAIR NO_x Ozone Season unit means a unit that is subject to the CAIR NO_x Ozone Season Trading Program under § 96.304 and, except for purposes of § 96.305 and subpart EEEE of this part, a CAIR NO_x Ozone Season opt-in unit under subpart IIII of this part.

CAIR NO_x source means a source that is subject to the CAIR NO_x Annual Trading Program.

CAIR permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under subpart CCCC of this part, including any permit revisions, specifying the CAIR NO_x Ozone Season Trading Program requirements applicable to a CAIR NO_x Ozone Season source, to each CAIR NO_x Ozone Season unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

CAIR SO₂ source means a source that is subject to the CAIR SO₂ Trading Program.

CAIR SO₂ Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAA through III of this part and § 51.124 of this chapter or established by the Administrator in accordance with subparts AAA through III of part 97 of this chapter and §§51.124(r) and 52.36 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

Clean Air Act or CAA means the Clean Air Act, 42 U.S.C. 7401, et seq.

Coal means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

Coal-derived fuel means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

Coal-fired means:

- (1) Except for purposes of subpart EEEE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year; or
- (2) For purposes of subpart EEEE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during a specified year.

Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:

- (1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and
- (2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity—
 - (i) For a topping-cycle cogeneration unit,
 - (A) Useful thermal energy not less than 5 percent of total energy output; and
 - (B) Useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5 percent of total energy input, if useful thermal energy produced

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is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

- (ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Combustion turbine means:

- (1) An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and
- (2) If the enclosed device under paragraph (1) of this definition is combined cycle, any associated duct burner, heat recovery steam generator and steam turbine.

Commence commercial operation means, with regard to a unit:

- (1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 96.305 and § 96.384(h).
 - (i) For a unit that is a CAIR NO_x Ozone Season unit under § 97.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.
 - (ii) For a unit that is a CAIR NO_x Ozone Season unit under § 96.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.
- (2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.305, for a unit that is not a CAIR NO_x Ozone Season unit under § 96.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_x Ozone Season unit under § 96.304.
 - (i) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.
 - (ii) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated

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as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

Commence operation means:

- (1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in § 96.384(h).
- (2) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.
- (3) For a unit that is replaced by a unit at the same source (e.g., repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate, except as provided in § 96.384(h)

Common stack means a single flue through which emissions from 2 or more units are exhausted.

Compliance account means a CAIR NO_x Ozone Season Allowance Tracking System account, established by the Administrator for a CAIR NO_x Ozone Season source under subpart FFFF or IIII of this part, in which any CAIR NO_x Ozone Season allowance allocations for the CAIR NO_x Ozone Season units at the source are initially recorded and in which are held any CAIR NO_x Ozone Season allowances available for use for a control period in order to meet the source's CAIR NO_x Ozone Season emissions limitation in accordance with § 96.354.

Continuous emission monitoring system or CEMS means the equipment required under subpart HHHH of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of nitrogen oxides emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with part 75 of this chapter. The following systems are the principal types of continuous emission monitoring systems required under subpart HHHH of this part:

- (1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);
- (2) A nitrogen oxides concentration monitoring system, consisting of a NO_x pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x emissions, in parts per million (ppm);
- (3) A nitrogen oxides emission rate (or NO_x-diluent) monitoring system, consisting of a NO_x pollutant concentration monitor, a diluent gas (CO₂ or O₂) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x concentration, in parts per million (ppm), diluent gas concentration, in percent CO₂ or O₂, and NO_x emission rate, in pounds per million British thermal units (lb/mmBtu);

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- (4) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H₂O;
- (5) A carbon dioxide monitoring system, consisting of a CO₂ pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO₂ concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO₂ emissions, in percent CO₂; and
- (6) An oxygen monitoring system, consisting of an O₂ concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O₂ in percent O₂.

Control period or ozone season means the period beginning May 1 of a calendar year, except as provided in §96.306(c)(2), and ending on September 30 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the CAIR designated representative and as determined by the Administrator in accordance with subpart HHHH of this part.

Excess emissions means any ton of nitrogen oxides emitted by the CAIR NO_x Ozone Season units at a CAIR NO_x Ozone Season source during a control period that exceeds the CAIR NO_x Ozone Season emissions limitation for the source.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

Fuel oil means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid, or gaseous state.

General account means a CAIR NO_x Ozone Season Allowance Tracking System account, established under subpart FFFF of this part, that is not a compliance account.

Generator means a device that produces electricity.

Gross electrical output means, with regard to a cogeneration unit, electricity made available for use, including any such electricity used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Heat input means, with regard to a specified period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the CAIR designated representative and determined by the Administrator in accordance with subpart HHHH of this part and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Heat input rate means the amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

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Hg Budget Trading Program means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance subpart HHHH of part 60 of this chapter and § 60.24(h)(6), or established by the Administrator under section 111 of the Clean Air Act, as a means of reducing national Hg emissions.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

- (1) For the life of the unit;
- (2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or
- (3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

Monitoring system means any monitoring system that meets the requirements of subpart HHHH of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

Most stringent State or Federal NO_x emissions limitation means, with regard to a unit, the lowest NO_x emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as of such installation as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount of such completion as specified by the person conducting the physical change.

Oil-fired means, for purposes of subpart EEEE of this part, combusting fuel oil for more than 15.0 percent of the annual heat input in a specified year and not qualifying as coal-fired.

Operator means any person who operates, controls, or supervises a CAIR NO_x Ozone Season unit or a CAIR NO_x Ozone Season source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Owner means any of the following persons:

- (1) With regard to a CAIR NO_x Ozone Season source or a CAIR NO_x Ozone Season unit at a source, respectively:

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- (i) Any holder of any portion of the legal or equitable title in a CAIR NO_x Ozone Season unit at the source or the CAIR NO_x Ozone Season unit;
 - (ii) Any holder of a leasehold interest in a CAIR NO_x Ozone Season unit at the source or the CAIR NO_x Ozone Season unit; or
 - (iii) Any purchaser of power from a CAIR NO_x Ozone Season unit at the source or the CAIR NO_x Ozone Season unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such CAIR NO_x Ozone Season unit; or
- (2) With regard to any general account, any person who has an ownership interest with respect to the CAIR NO_x Ozone Season allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR NO_x Ozone Season allowances.

Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the CAIR NO_x Ozone Season Trading Program in accordance with subpart CCCC of this part or, if no such agency has been so authorized, the Administrator.

Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

Receive or receipt of means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.

Recordation, record, or recorded means, with regard to CAIR NO_x Ozone Season allowances, the movement of CAIR NO_x Ozone Season allowances by the Administrator into or between CAIR NO_x Ozone Season Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.

Replacement, replace, or replaced means, with regard to a unit, the demolishing of a unit, or the permanent shutdown and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or shutdown unit (the replaced unit)

Repowered means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

- (1) Atmospheric or pressurized fluidized bed combustion;
- (2) Integrated gasification combined cycle;
- (3) Magnetohydrodynamics;

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- (4) Direct and indirect coal-fired turbines;
- (5) Integrated gasification fuel cells; or
- (6) As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (1) through (5) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

Serial number means, for a CAIR NO_x Ozone Season allowance, the unique identification number assigned to each CAIR NO_x Ozone Season allowance by the Administrator.

Sequential use of energy means:

- (1) For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or
- (2) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

Solid waste incineration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a “solid waste incineration unit” as defined in section 129(g)(1) of the Clean Air Act.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the Clean Air Act, a “source,” including a “source” with multiple units, shall be considered a single “facility.”

State means one of the States or the District of Columbia that adopts the CAIR NO_x Ozone Season Trading Program pursuant to § 51.123(aa)(1) or (2), (bb), or (dd) of this chapter.

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

- (1) In person;
- (2) By United States Postal Service; or
- (3) By other means of dispatch or transmission and delivery. Compliance with any “submission” or “service” deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the Clean Air Act and part 70 or part 71 of this chapter.

Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.

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Ton means 2,000 pounds. For the purpose of determining compliance with the CAIR NO_x Ozone Season emissions limitation, total tons of nitrogen oxides emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with subpart HHHH of this part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

Total energy output means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

Unit means a stationary, fossil-fuel fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour or hour of unit operation means an hour in which a unit combusts any fuel.

Useful power means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:

- (1) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;
- (2) Used in a heating application (e.g., space heating or domestic hot water heating); or
- (3) Used in a space cooling application (i.e., thermal energy used by an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

§ 96.303 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

Btu—British thermal unit
CO₂—carbon dioxide
H₂O—water
Hg—mercury
hr—hour
kW—kilowatt electrical

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kWh—kilowatt hour
lb—pound
mmBtu—million Btu
MWe—megawatt electrical
MWh—megawatt hour
NO_x—nitrogen oxides
O₂—oxygen
ppm—parts per million
scfh—standard cubic feet per hour
SO₂—sulfur dioxide
yr—year

§ 96.304 Applicability

(a) Except as provided in paragraph (b) of this section:

- (1) The following units in a State shall be CAIR NO_x Ozone Season units, and any source that includes one or more such units shall be a CAIR NO_x Ozone Season source, subject to the requirements of this subpart and subparts BBBB through HHHH of this part: Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.
 - (2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR NO_x Ozone Season unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR NO_x Ozone Season unit as provided in paragraph (a)(1) of this section on the first date on which it both combusts fossil fuel and serves such generator.
- (b) The units in a State that meet the requirements set forth in paragraph (b)(1)(i), (b)(2)(i), or (b)(2)(ii) of this section shall not be CAIR NO_x Ozone Season units:
- (1) (i) Any unit that is a CAIR NO_x Ozone Season unit under paragraph (a)(1) or (2) of this section:
 - (A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and
 - (B) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.
 - (ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.

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- (2) (i) Any unit that is a CAIR NO_x Ozone Season unit under paragraph (a)(1) or (2) of this section commencing operation before January 1, 1985:
 - (A) Qualifying as a solid waste incineration unit; and
 - (B) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).
- (ii) Any unit that is a CAIR NO_x Ozone Season unit under paragraph (a)(1) or (2) of this section commencing operation on or after January 1, 1985:
 - (A) Qualifying as a solid waste incineration unit; and
 - (B) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).
 - (iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (b)(2)(i) or (ii) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

§ 96.305 Retired unit exemption.

- (a) (1) Any CAIR NO_x Ozone Season unit that is permanently retired and is not a CAIR NO_x Ozone Season opt-in unit under subpart IIII of this part shall be exempt from the CAIR NO_x Ozone Season Trading Program, except for the provisions of this section, §96.302, §96.303, §96.304, § 96.306(c)(4) through (7), § 96.307, §96.308, and subparts BBBB and EEEE through GGGG of this part.
 - (2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CAIR NO_x Ozone Season unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR permit for the unit and shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit was permanently retired on a specific date and will comply with the requirements of paragraph (b) of this section.
 - (3) After receipt of the statement under paragraph (a)(2) of this section, the permitting authority will amend any permit under subpart CCCC of this part covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (a)(1) and (b) of this section.
- (b) Special provisions.

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- (1) A unit exempt under paragraph (a) of this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.
- (2) The permitting authority will allocate CAIR NO_x Ozone Season allowances under subpart EEEE of this part to a unit exempt under paragraph (a) of this section.
- (3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.
- (4) The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CAIR NO_x Ozone Season Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.
- (5) A unit exempt under paragraph (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under § 96.322 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the unit resumes operation.
- (6) On the earlier of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption:
 - (i) The date on which the CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(5) of this section;
 - (ii) The date on which the CAIR designated representative is required under paragraph (b)(5) of this section to submit a CAIR permit application for the unit; or
 - (iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.
- (7) For the purpose of applying monitoring, reporting, and recordkeeping requirements under subpart HHHH of this part, a unit that loses its exemption under paragraph (a) of this section shall be treated as a unit that commences commercial operation on the first date on which the unit resumes operation.

§ 96.306 Standard requirements.

(a) Permit requirements.

- (1) The CAIR designated representative of each CAIR NO_x Ozone Season source required to have a title V operating permit and each CAIR NO_x Ozone Season unit required to have a title V operating permit at the source shall:

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- (i) Submit to the permitting authority a complete CAIR permit application under §96.322 in accordance with the deadlines specified in § 96.321; and
 - (ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.
 - (2) The owners and operators of each CAIR NO_x Ozone Season source required to have a title V operating permit and each CAIR NO_x Ozone Season unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority under subpart CCCC of this part for the source and operate the source and the unit in compliance with such CAIR permit.
 - (3) Except as provided in subpart IIII of this part, the owners and operators of a CAIR NO_x Ozone Season source that is not otherwise required to have a title V operating permit and each CAIR NO_x Ozone Season unit that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CCCC of this part for such CAIR NO_x Ozone Season source and such CAIR NO_x Ozone Season unit.
- (b) Monitoring, reporting, and recordkeeping requirements.
- (1) The owners and operators, and the CAIR designated representative, of each CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subpart HHHH of this part.
 - (2) The emissions measurements recorded and reported in accordance with subpart HHHH of this part shall be used to determine compliance by each CAIR NO_x Ozone Season source with the CAIR NO_x Ozone Season emissions limitation under paragraph (c) of this section.
- (c) Nitrogen oxides ozone season emission requirements.
- (1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source shall hold, in the source's compliance account, CAIR NO_x Ozone Season allowances available for compliance deductions for the control period under § 96.354(a) in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO_x Ozone Season units at the source, as determined in accordance with subpart HHHH of this part.
 - (2) A CAIR NO_x Ozone Season unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of May 1, 2009 or the deadline for meeting the unit's monitor certification requirements under § 96.370(b)(1), (2), (3), or (7) and for each control period thereafter.
 - (3) A CAIR NO_x Ozone Season allowance shall not be deducted, for compliance with the requirements under paragraph (c)(1) of this section, for a control period in a calendar year before the year for which the CAIR NO_x Ozone Season allowance was allocated.
 - (4) CAIR NO_x Ozone Season allowances shall be held in, deducted from, or transferred into or among CAIR NO_x Ozone Season Allowance Tracking System accounts in accordance with subparts FFFF, GGGG, and IIII of this part.

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- (5) A CAIR NO_x Ozone Season allowance is a limited authorization to emit one ton of nitrogen oxides in accordance with the CAIR NO_x Ozone Season Trading Program. No provision of the CAIR NO_x Ozone Season Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 96.305 and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.
 - (6) A CAIR NO_x Ozone Season allowance does not constitute a property right.
 - (7) Upon recordation by the Administrator under subpart FFFF, GGGG, or IIII of this part, every allocation, transfer, or deduction of a CAIR NO_x Ozone Season allowance to or from a CAIR NO_x Ozone Season source's compliance account is incorporated automatically in any CAIR permit of the source.
- (d) Excess emissions requirements.
- (1) The owners and operators of the source and each CAIR NO_x Ozone Season unit at the source shall surrender the CAIR NO_x Ozone Season allowances required for deduction under § 96.354(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and
 - (2) Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.
- (e) Recordkeeping and reporting requirements.
- (1) Unless otherwise provided, the owners and operators of the CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the permitting authority or the Administrator.
 - (i) The certificate of representation under § 96.313 for the CAIR designated representative for the source and each CAIR NO_x Ozone Season unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under § 96.313 changing the CAIR designated representative.
 - (ii) All emissions monitoring information, in accordance with subpart HHHH of this part, provided that to the extent that subpart HHHH of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.
 - (iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO_x Ozone Season Trading Program.
 - (iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO_x Ozone Season Trading Program or to demonstrate compliance with the requirements of the CAIR NO_x Ozone Season Trading Program.

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- (2) The CAIR designated representative of a CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source shall submit the reports required under the CAIR NO_x Ozone Season Trading Program, including those under subpart HHHH of this part.
- (f) Liability.
 - (1) Each CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit shall meet the requirements of the CAIR NO_x Ozone Season Trading Program.
 - (2) Any provision of the CAIR NO_x Ozone Season Trading Program that applies to a CAIR NO_x Ozone Season source or the CAIR designated representative of a CAIR NO_x Ozone Season source shall also apply to the owners and operators of such source and of the CAIR NO_x Ozone Season units at the source.
 - (3) Any provision of the CAIR NO_x Ozone Season Trading Program that applies to a CAIR NO_x Ozone Season unit or the CAIR designated representative of a CAIR NO_x Ozone Season unit shall also apply to the owners and operators of such unit.
 - (g) Effect on other authorities. No provision of the CAIR NO_x Ozone Season Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 96.305 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR NO_x Ozone Season source or CAIR NO_x Ozone Season unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 96.307 Computation of time.

- (a) Unless otherwise stated, any time period scheduled, under the CAIR NO_x Ozone Season Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.
- (b) Unless otherwise stated, any time period scheduled, under the CAIR NO_x Ozone Season Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.
- (c) Unless otherwise stated, if the final day of any time period, under the CAIR NO_x Ozone Season Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 96.308 Appeal procedures.

The appeal procedures for decisions of the Administrator under the CAIR NO_x Ozone Season Trading Program are set forth in part 78 of this chapter.

Subpart BBBB—CAIR Designated Representative for CAIR NO_x Ozone Season Sources

§ 96.310 Authorization and responsibilities of CAIR designated representative.

- (a) Except as provided under § 96.311, each CAIR NO_x Ozone Season source, including all CAIR NO_x Ozone Season units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR NO_x Ozone Season Trading Program concerning the source or any CAIR NO_x Ozone Season unit at the source.

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- (b) The CAIR designated representative of the CAIR NO_x Ozone Season source shall be selected by an agreement binding on the owners and operators of the source and all CAIR NO_x Ozone Season units at the source and shall act in accordance with the certification statement in § 96.313(a)(4)(iv).
- (c) Upon receipt by the Administrator of a complete certificate of representation under § 96.313, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR NO_x Ozone Season source represented and each CAIR NO_x Ozone Season unit at the source in all matters pertaining to the CAIR NO_x Ozone Season Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.
- (d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR NO_x Ozone Season Allowance Tracking System account will be established for a CAIR NO_x Ozone Season unit at a source, until the Administrator has received a complete certificate of representation under § 96.313 for a CAIR designated representative of the source and the CAIR NO_x Ozone Season units at the source.
- (e)
 - (1) Each submission under the CAIR NO_x Ozone Season Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR NO_x Ozone Season source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."
 - (2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a CAIR NO_x Ozone Season source or a CAIR NO_x Ozone Season unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 96.311 Alternate CAIR designated representative.

- (a) A certificate of representation under § 96.313 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.
- (b) Upon receipt by the Administrator of a complete certificate of representation under § 96.313, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

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- (c) Except in this section and §§ 96.302, 96.310(a) and (d), 96.312, 96.313, 96.315, 96.351, and 96.382 whenever the term “CAIR designated representative” is used in subparts AAAA through IIII of this part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

§ 96.312 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

- (a) Changing CAIR designated representative. The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.313. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR NO_x Ozone Season source and the CAIR NO_x Ozone Season units at the source.
- (b) Changing alternate CAIR designated representative. The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.313. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR NO_x Ozone Season source and the CAIR NO_x Ozone Season units at the source.
- (c) Changes in owners and operators.
- (1) In the event an owner or operator of a CAIR NO_x Ozone Season source or a CAIR NO_x Ozone Season unit is not included in the list of owners and operators in the certificate of representation under § 96.313, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the permitting authority, the Administrator, or a court, as if the owner or operator were included in such list.
- (2) Within 30 days following any change in the owners and operators of a CAIR NO_x Ozone Season source or a CAIR NO_x Ozone Season unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under § 96.313 amending the list of owners and operators to include the change.

§ 96.313 Certificate of representation.

- (a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the Administrator:
- (1) Identification of the CAIR NO_x Ozone Season source, and each CAIR NO_x Ozone Season unit at the source, for which the certificate of representation is submitted, including identification and nameplate capacity of each generator served by each such unit.
- (2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR designated representative and any alternate CAIR designated representative.

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- (3) A list of the owners and operators of the CAIR NO_x Ozone Season source and of each CAIR NO_x Ozone Season unit at the source.
- (4) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative—
 - (i) “I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR NO_x Ozone Season unit at the source.”
 - (ii) “I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_x Ozone Season Trading Program on behalf of the owners and operators of the source and of each CAIR NO_x Ozone Season unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions.”
 - (iii) “I certify that the owners and operators of the source and of each CAIR NO_x Ozone Season unit at the source shall be bound by any order issued to me by the Administrator, the permitting authority, or a court regarding the source or unit.”
 - (iv) “Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR NO_x Ozone Season unit, or where a utility or industrial customer purchases power from a CAIR NO_x Ozone Season unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the ‘CAIR designated representative’ or ‘alternate CAIR designated representative’, as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR NO_x Ozone Season unit at the source; and CAIR NO_x Ozone Season allowances and proceeds of transactions involving CAIR NO_x Ozone Season allowances will be deemed to be held or distributed in proportion to each holder’s legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR NO_x Ozone Season allowances by contract, CAIR NO_x Ozone Season allowances and proceeds of transactions involving CAIR NO_x Ozone Season allowances will be deemed to be held or distributed in accordance with the contract.”
- (5) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.
- (b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 96.314 Objections concerning CAIR designated representative.

- (a) Once a complete certificate of representation under § 96.313 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 96.313 is received by the Administrator.
- (b) Except as provided in § 96.312(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation,

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action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR NO_x Ozone Season Trading Program.

- (c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR NO_x Ozone Season allowance transfers.

§ 96.315 Delegation by CAIR designated representative and alternate CAIR designated representative.

- (a) A CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.
- (b) An alternate CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.
- (c) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the CAIR designated representative or alternate CAIR designated representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:
 - (1) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR designated representative or alternate CAIR designated representative;
 - (2) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to as an “agent”);
 - (3) For each such natural person, a list of the type or types of electronic submissions under paragraph (a) or (b) of this section for which authority is delegated to him or her; and
 - (4) The following certification statements by such CAIR designated representative or alternate CAIR designated representative:
 - (i) “I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR designated representative or alternate CAIR designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 96.315(d) shall be deemed to be an electronic submission by me.”
 - (ii) “Until this notice of delegation is superseded by another notice of delegation under 40 CFR 96.315(d), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 96.315 is terminated.”
- (d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the CAIR designated representative or alternate CAIR designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by

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the Administrator of a superseding notice of delegation submitted by such CAIR designated representative or alternate CAIR designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

- (e) Any electronic submission covered by the certification in paragraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under paragraph (d) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

Subpart CCCC—Permits

§ 96.320 General CAIR NO_x Ozone Season Trading Program permit requirements.

- (a) For each CAIR NO_x Ozone Season source required to have a title V operating permit or required, under subpart IIII of this part, to have a title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the title V permit or other federally enforceable permit as applicable shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter or the permitting authority's regulations for other federally enforceable permits as applicable, except as provided otherwise by §96.305, this subpart, and subpart IIII of this part.
- (b) Each CAIR permit shall contain, with regard to the CAIR NO_x Ozone Season source and the CAIR NO_x Ozone Season units at the source covered by the CAIR permit, all applicable CAIR NO_x Ozone Season Trading Program, CAIR NO_x Annual Trading Program, and CAIR SO₂ Trading Program requirements and shall be a complete and separable portion of the title V operating permit or other federally enforceable permit under paragraph (a) of this section.

§ 96.321 Submission of CAIR permit applications.

- (a) Duty to apply. The CAIR designated representative of any CAIR NO_x Ozone Season source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 96.322 for the source covering each CAIR NO_x Ozone Season unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the CAIR NO_x Ozone Season unit commences commercial operation.
- (b) Duty to Reapply. For a CAIR NO_x Ozone Season source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 96.322 for the source covering each CAIR NO_x Ozone Season unit at the source to renew the CAIR permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal, except as provided in §96.383(b).

§ 96.322 Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the following elements concerning the CAIR NO_x Ozone Season source for which the application is submitted, in a format prescribed by the permitting authority:

- (a) Identification of the CAIR NO_x Ozone Season source;

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- (b) Identification of each CAIR NO_x Ozone Season unit at the CAIR NO_x Ozone Season source; and
- (c) The standard requirements under § 96.306.

§ 96.323 CAIR permit contents and term.

- (a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all elements required for a complete CAIR permit application under § 96.322.
- (b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 96.302 and, upon recordation by the Administrator under subpart FFFF, GGGG, or IIII of this part, every allocation, transfer, or deduction of a CAIR NO_x Ozone Season allowance to or from the compliance account of the CAIR NO_x Ozone Season source covered by the permit.
- (c) The term of the CAIR permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR NO_x Ozone Season source's title V operating permit or other federally enforceable permit as applicable.

§ 96.324 CAIR permit revisions.

Except as provided in § 96.323(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations or the permitting authority's regulations for other federally enforceable permits as applicable addressing permit revisions.

Subpart DDDD [Reserved]

Subpart EEEE—CAIR NO_x Ozone Season Allowance Allocations

§ 96.340 State trading budgets.

- (a) Except as provided in paragraph (b) of this section, the State trading budgets for annual allocations of CAIR NO_x Ozone Season allowances for the control periods in 2009 through 2014 and in 2015 and thereafter are respectively as follows:

State	State trading budget for 2009–2014 (tons)	State trading budget for 2015 and thereafter (tons)
Alabama	32,182	26,818
Arkansas	11,515	9,596
Connecticut	2,559	2,559
Delaware	2,226	1,855
District of Columbia	112	94
Florida	47,912	39,926
Illinois	30,701	28,981

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Indiana	45,952	39,273
Iowa	14,263	11,886
Kentucky	36,045	30,587
Louisiana	17,085	14,238
Maryland	12,834	10,695
Massachusetts	7,551	6,293
Michigan	28,971	24,142
Mississippi	8,714	7,262
Missouri	26,678	22,231
New Jersey	6,654	5,545
New York	20,632	17,193
North Carolina	28,392	23,660
Ohio	45,664	39,945
Pennsylvania	42,171	35,143
South Carolina	15,249	12,707
Tennessee	22,842	19,035
Virginia	15,994	13,328
West Virginia	26,859	26,525
Wisconsin	17,987	14,989

- (b) If a permitting authority issues additional CAIR NO_x Ozone Season allowance allocations under §51.123(aa)(2)(iii)(A) of this chapter, the amount in the State trading budget for a control period in a calendar year will be the sum of the amount set forth for the State and for the year in paragraph (a) of this section and the amount of additional CAIR NO_x Ozone Season allowance allocations issued under §51.123(aa)(2)(iii)(A) of this chapter for the year.

§ 96.341 Timing requirements for CAIR NO_x Ozone Season allowance allocations.

- (a) By October 31, 2006, the permitting authority will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with §96.342(a) and (b), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.
- (b) By October 31, 2009 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.342(a) and (b), for the control period in the *s_i*-th year after the year of the applicable deadline for submission under this paragraph.
- (c) By July 31, 2009 and July 31 of each year thereafter, the permitting authority will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.342(c), (a), and (d), for the control period in the year of the applicable deadline for submission under this paragraph.

§ 96.342 CAIR NO_x Ozone Season allowance allocations.

- (a) (1) The baseline heat input (in mmBtu) used with respect to CAIR NO_x Ozone Season allowance allocations under paragraph (b) of this section for each CAIR NO_x Ozone Season unit will be:

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- (i) For units commencing operation before January 1, 2001 the average of the 3 highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:
 - (A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;
 - (B) If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and
 - (C) If the unit is not subject to paragraph (a)(1)(i)(A) or (B) of this section, the unit's control period heat input for such year is multiplied by 40 percent.
 - (ii) For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.
- (2) (i) A unit's control period heat input, and a unit's status as coal-fired or oil-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO_x emissions during a control period in a calendar year under paragraph (c)(3) of this section, will be determined in accordance with part 75 of this chapter, to the extent the unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.
- (ii) A unit's converted control period heat input for a calendar year specified under paragraph (a)(1)(ii) of this section equals:
- (A) Except as provided in paragraph (a)(2)(ii)(B) or (C) of this section, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, and divided by 1,000,000 Btu/mmBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;
 - (B) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/mmBtu; or
 - (C) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,413 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery

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steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.

- (b) (1) For each control period in 2009 and thereafter, the permitting authority will allocate to all CAIR NO_x Ozone Season units in the State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO_x Ozone Season allowances equal to 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the tons of NO_x emissions in the State trading budget under § 96.340 (except as provided in paragraph (d) of this section).
- (2) The permitting authority will allocate CAIR NO_x Ozone Season allowances to each CAIR NO_x Ozone Season unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_x Ozone Season allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such CAIR NO_x Ozone Season unit to the total amount of baseline heat input of all such CAIR NO_x Ozone Season units in the State and rounding to the nearest whole allowance as appropriate.
- (c) For each control period in 2009 and thereafter, the permitting authority will allocate CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units in a State that are not allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input but all CAIR NO_x Ozone Season allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:
 - (1) The permitting authority will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_x Ozone Season allowances equal to 5 percent for a control period in 2009 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of tons of NO_x emissions in the State trading budget under § 96.340.
 - (2) The CAIR designated representative of such a CAIR NO_x Ozone Season unit may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated CAIR NO_x Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section. A separate CAIR NO_x Ozone Season allowance allocation request for each control period for which CAIR NO_x allowances are sought must be submitted on or before February 1 of such control period and after the date on which the CAIR NO_x Ozone Season unit commences commercial operation.
 - (3) In a CAIR NO_x Ozone Season allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_x Ozone Season allowances in an amount not exceeding the CAIR NO_x Ozone Season unit's total tons of NO_x emissions during the control period immediately before such control period.
 - (4) The permitting authority will review each CAIR NO_x Ozone Season allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO_x Ozone Season allowances for each control period pursuant to such request as follows:

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- (i) The permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.
 - (ii) On or after February 1 before the control period, the permitting authority will determine the sum of the CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.
 - (iii) If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the permitting authority will allocate the amount of CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.
 - (iv) If the amount of CAIR NO_x Ozone Season allowances in the new unit set aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the permitting authority will allocate to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.
 - (v) The permitting authority will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x Ozone Season allowances (if any) allocated for the control period to the CAIR NO_x Ozone Season unit covered by the request.
- (d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR NO_x Ozone Season allowances remain in the new unit set-aside for the control period, the permitting authority will allocate to each CAIR NO_x Ozone Season unit that was allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section an amount of CAIR NO_x Ozone Season allowances equal to the total amount of such remaining unallocated CAIR NO_x Ozone Season allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the amount of tons of NO_x emissions in the State trading budget under § 96.340, and rounded to the nearest whole allowance as appropriate.

Subpart FFFF—CAIR NO_x Ozone Season Allowance Tracking System

§ 96.350 [Reserved]

§ 96.351 Establishment of accounts.

- (a) Compliance accounts. Except as provided in § 96.384(e), upon receipt of a complete certificate of representation under § 96.313, the Administrator will establish a compliance account for the CAIR NO_x Ozone Season source for which the certificate of representation was submitted, unless the source already has a compliance account.

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(b) General accounts—

(1) Application for general account.

- (i) Any person may apply to open a general account for the purpose of holding and transferring CAIR NO_x Ozone Season allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.
- (ii) A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:
 - (A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR authorized account representative and any alternate CAIR authorized account representative;
 - (B) Organization name and type of organization, if applicable;
 - (C) A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR NO_x Ozone Season allowances held in the general account;
 - (D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: “I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR NO_x Ozone Season allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_x Ozone Season Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account.”
 - (E) The signature of the CAIR authorized account representative and any alternate CAIR authorized account representative and the dates signed.
- (iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) Authorization of CAIR authorized account representative or alternate CAIR authorized account representative.

- (i) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:

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- (A) The Administrator will establish a general account for the person or persons for whom the application is submitted.
 - (B) The CAIR authorized account representative and any alternate CAIR authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR NO_x Ozone Season allowances held in the general account in all matters pertaining to the CAIR NO_x Ozone Season Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account.
 - (C) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.
- (ii) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR NO_x Ozone Season allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR NO_x Ozone Season allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."
 - (iii) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(ii) of this section.
- (3) Changing CAIR authorized account representative and alternate CAIR authorized account representative; changes in persons with ownership interest.
 - (i) The CAIR authorized account representative for a general account maybe changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_x Ozone Season allowances in the general account.

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- (ii) The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_x Ozone Season allowances in the general account.
 - (iii)
 - (A) In the event a person having an ownership interest with respect to CAIR NO_x Ozone Season allowances in the general account is not included in the list of such persons in the application for a general account, such person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR authorized account representative and any alternate CAIR authorized account representative of the account, and the decisions and orders of the Administrator or a court, as if the person were included in such list.
 - (B) Within 30 days following any change in the persons having an ownership interest with respect to CAIR NO_x Ozone Season allowances in the general account, including the addition of a new person, the CAIR authorized account representative or any alternate CAIR authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR NO_x Ozone Season allowances in the general account to include the change.
- (4) Objections concerning CAIR authorized account representative or alternate CAIR authorized account representative.
 - (i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.
 - (ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative or the finality of any decision or order by the Administrator under the CAIR NO_x Ozone Season Trading Program.
 - (iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR NO_x Ozone Season allowance transfers.
- (5) Delegation by CAIR authorized account representative and alternate CAIR authorized account representative.

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- (i) A CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FFFF and GGGG of this part.
- (ii) An alternate CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FFFF and GGGG of this part.
- (iii) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (b)(5)(i) or (ii) of this section, the CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:
 - (A) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR authorized account representative or alternate CAIR authorized account representative;
 - (B) The name, address, e-mail address, telephone number, and, facsimile transmission number (if any) of each such natural person (referred to as an “agent”);
 - (C) For each such natural person, a list of the type or types of electronic submissions under paragraph (b)(5)(i) or (ii) of this section for which authority is delegated to him or her;
 - (D) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: “I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR authorized account representative or alternate CAIR authorized representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 96.351(b)(5)(iv) shall be deemed to be an electronic submission by me.”; and
 - (E) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: “Until this notice of delegation is superseded by another notice of delegation under 40 CFR 96.351(b)(5)(iv), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 96.351(b)(5) is terminated.”.
- (iv) A notice of delegation submitted under paragraph (b)(5)(iii) of this section shall be effective, with regard to the CAIR authorized account representative or alternate CAIR authorized account representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.
- (v) Any electronic submission covered by the certification in paragraph (b)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (b)(5)(iv) of this section shall be deemed to be an electronic submission by the CAIR

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designated representative or alternate CAIR designated representative submitting such notice of delegation.

- (c) Account identification. The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

§ 96.352 Responsibilities of CAIR authorized account representative.

Following the establishment of a CAIR NO_x Ozone Season Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR NO_x Ozone Season allowances in the account, shall be made only by the CAIR authorized account representative for the account.

§ 96.353 Recordation of CAIR NO_x Ozone Season allowance allocations.

- (a) By September 30, 2007, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the permitting authority in accordance with § 96.341(a), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.
- (b) By December 1, 2009, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the permitting authority in accordance with § 96.341(b), for the control period in 2015.
- (c) By December 1, 2010 and December 1 of each year thereafter, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the permitting authority in accordance with § 96.341(b), for the control period in the *six*th year after the year of the applicable deadline for recordation under this paragraph.
- (d) By September 1, 2009 and September 1 of each year thereafter, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the permitting authority in accordance with § 96.341(c), for the control period in the year of the applicable deadline for recordation under this paragraph.
- (e) Serial numbers for allocated CAIR NO_x Ozone Season allowances. When recording the allocation of CAIR NO_x Ozone Season allowances for a CAIR NO_x Ozone Season unit in a compliance account, the Administrator will assign each CAIR NO_x Ozone Season allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR NO_x Ozone Season allowance is allocated.

§ 96.354 Compliance with CAIR NO_x emissions limitation.

- (a) Allowance transfer deadline. The CAIR NO_x Ozone Season allowances are available to be deducted for compliance with a source's CAIR NO_x Ozone Season emissions limitation for a control period in a given calendar year only if the CAIR NO_x Ozone Season allowances:
 - (1) Were allocated for the control period in the year or a prior year, and;
 - (2) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR NO_x Ozone Season allowance

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transfer correctly submitted for recordation under § 96.360 and §96.361 by the allowance transfer deadline for the control period; and

- (b) Deductions for compliance. Following the recordation, in accordance with § 96.361, of CAIR NO_x Ozone Season allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR NO_x Ozone Season allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR NO_x Ozone Season emissions limitation for the control period, as follows:
 - (1) Until the amount of CAIR NO_x Ozone Season allowances deducted equals the number of tons of total nitrogen oxides emissions, determined in accordance with subpart HHHH of this part, from all CAIR NO_x Ozone Season units at the source for the control period; or
 - (2) If there are insufficient CAIR NO_x Ozone Season allowances to complete the deductions in paragraph (b)(1) of this section, until no more CAIR NO_x Ozone Season allowances available under paragraph (a) of this section remain in the compliance account.
- (c)
 - (1) Identification of CAIR NO_x Ozone Season allowances by serial number. The CAIR authorized account representative for a source's compliance account may request that specific CAIR NO_x Ozone Season allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the CAIR NO_x Ozone Season source and the appropriate serial numbers.
 - (2) First-in, first-out. The Administrator will deduct CAIR NO_x Ozone Season allowances under paragraph (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR NO_x Ozone Season allowances by serial number under paragraph (c)(1) of this section, on a first-in, first-out (FIFO) accounting basis in the following order:
 - (i) Any CAIR NO_x Ozone Season allowances that were allocated to the units at the source, in the order of recordation; and then
 - (ii) Any CAIR NO_x Ozone Season allowances that were allocated to any entity and transferred and recorded in the compliance account pursuant to subpart GGGG of this part, in the order of recordation.
- (d) Deductions for excess emissions.
 - (1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the CAIR NO_x Ozone Season source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CAIR NO_x Ozone Season allowances, allocated for the control period in the immediately following calendar year, equal to 3 times the number of tons of the source's excess emissions.
 - (2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the CAIR NO_x Ozone Season source or the CAIR NO_x Ozone Season units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or applicable State law.

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- (e) Recordation of deductions. The Administrator will record in the appropriate compliance account all deductions from such an account under paragraphs (b) and (d) of this section and subpart IIII.
- (f) Administrator's action on submissions.
 - (1) The Administrator may review and conduct independent audits concerning any submission under the CAIR NO_x Ozone Season Trading Program and make appropriate adjustments of the information in the submissions.
 - (2) The Administrator may deduct CAIR NO_x Ozone Season allowances from or transfer CAIR NO_x Ozone Season allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section, and record such deductions and transfers.

§ 96.355 Banking.

- (a) CAIR NO_x Ozone Season allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.
- (b) Any CAIR NO_x Ozone Season allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR NO_x Ozone Season allowance is deducted or transferred under § 96.354, § 96.356, or subpart GGGG or IIII of this part.

§ 96.356 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR NO_x Ozone Season Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR authorized account representative for the account.

§ 96.357 Closing of general accounts.

- (a) The CAIR authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under §§96.360 and 96.361 for any CAIR NO_x Ozone Season allowances in the account to one or more other CAIR NO_x Ozone Season Allowance Tracking System accounts.
- (b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR NO_x Ozone Season allowances, the Administrator may notify the CAIR authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR NO_x Ozone Season allowances into the account under §§96.360 and 96.361 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart GGGG—CAIR NO_x Ozone Season Allowance Transfers

§ 96.360 Submission of CAIR NO_x Ozone Season allowance transfers.

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A CAIR authorized account representative seeking recordation of a CAIR NO_x Ozone Season allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR NO_x Ozone Season allowance transfer shall include the following elements, in a format specified by the Administrator:

- (a) The account numbers for both the transferor and transferee accounts;
- (b) The serial number of each CAIR NO_x Ozone Season allowance that is in the transferor account and is to be transferred; and
- (c) The name and signature of the CAIR authorized account representative of the transferor account and the date signed.

§ 96.361 EPA recordation.

- (a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CAIR NO_x Ozone Season allowance transfer, the Administrator will record a CAIR NO_x Ozone Season allowance transfer by moving each CAIR NO_x Ozone Season allowance from the transferor account to the transferee account as specified by the request, provided that:
 - (1) The transfer is correctly submitted under § 96.360; and
 - (2) The transferor account includes each CAIR NO_x Ozone Season allowance identified by serial number in the transfer.
- (b) A CAIR NO_x Ozone Season allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR NO_x Ozone Season allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 96.354 for the control period immediately before such allowance transfer deadline.
- (c) Where a CAIR NO_x Ozone Season allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 96.362 Notification.

- (a) Notification of recordation. Within 5 business days of recordation of a CAIR NO_x Ozone Season allowance transfer under § 96.361, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.
- (b) Notification of non-recordation. Within 10 business days of receipt of a CAIR NO_x Ozone Season allowance transfer that fails to meet the requirements of § 96.361(a), the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:
 - (1) A decision not to record the transfer, and
 - (2) The reasons for such non-recordation.
- (c) Nothing in this section shall preclude the submission of a CAIR NO_x Ozone Season allowance transfer for recordation following notification of non-recordation.

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Subpart HHHH—Monitoring and Reporting

§ 96.370 General requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR NO_x Ozone Season unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subpart H of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 96.302 and in § 72.2 of this chapter shall apply, and the terms “affected unit,” “designated representative,” and “continuous emission monitoring system” (or “CEMS”) in part 75 of this chapter shall be deemed to refer to the terms “CAIR NO_x Ozone Season unit,” “CAIR designated representative,” and “continuous emission monitoring system” (or “CEMS”) respectively, as defined in § 96.302. The owner or operator of a unit that is not a CAIR NO_x Ozone Season unit but that is monitored under § 75.72(b)(2)(ii) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR NO_x Ozone Season unit.

- (a) Requirements for installation, certification, and data accounting. The owner or operator of each CAIR NO_x Ozone Season unit shall:
 - (1) Install all monitoring systems required under this subpart for monitoring NO_x mass emissions and individual unit heat input (including all systems required to monitor NO_x emission rate, NO_x concentration, stack gas moisture content, stack gas flow rate, CO₂ or O₂ concentration, and fuel flow rate, as applicable, in accordance with §§ 75.71 and 75.72 of this chapter);
 - (2) Successfully complete all certification tests required under § 96.371 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and
 - (3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.
- (b) Compliance deadlines. Except as provided in paragraph (e) of this section, the owner or operator shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the following dates:
 - (1) For the owner or operator of a CAIR NO_x Ozone Season unit that commences commercial operation before July 1, 2007, by May 1, 2008.
 - (2) For the owner or operator of a CAIR NO_x Ozone Season unit that commences commercial operation on or after July 1, 2007 and that reports on an annual basis under § 96.374(d), by the later of the following dates:
 - (i) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation; or
 - (ii) May 1, 2008.
 - (3) For the owner or operator of a CAIR NO_x Ozone Season unit that commences commercial operation on or after July 1, 2007 and that reports on a control period basis under § 96.374(d)(2)(ii), by the later of the following dates:

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- (i) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation; or
 - (ii) If the compliance date under paragraph (b)(3)(i) of this section is not during a control period, May 1 immediately following the compliance date under paragraph (b)(3)(i) of this section.
 - (4) For the owner or operator of a CAIR NO_x Ozone Season unit for which construction of a new stack or flue or installation of add-on NO_x emission controls is completed after the applicable deadline under paragraph (b)(1), (2), (6), or (7) of this section and that reports on an annual basis under § 96.374(d), by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_x emissions controls.
 - (5) For the owner or operator of a CAIR NO_x Ozone Season unit for which construction of a new stack or flue or installation of add-on NO_x emission controls is completed after the applicable deadline under paragraph (b)(1), (3), (6), or (7) of this section and that reports on a control period basis under §96.374(d)(2)(ii), by the later of the following dates:
 - (i) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_x emissions controls; or
 - (ii) If the compliance date under paragraph (b)(5)(i) of this section is not during a control period, May 1 immediately following the compliance date under paragraph (b)(5)(i) of this section.
 - (6) Notwithstanding the dates in paragraphs (b)(1), (2), and (3) of this section, for the owner or operator of a unit for which a CAIR NO_x Ozone Season opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, by the date specified in § 96.384(b).
 - (7) Notwithstanding the dates in paragraphs (b)(1), (2), and (3) of this section, for the owner or operator of a CAIR NO_x Ozone Season opt-in unit, by the date on which the CAIR NO_x Ozone Season opt-in unit under subpart IIII of this part enters the CAIR NO_x Ozone Season Trading Program as provided in § 96.384(g).
- (c) Reporting data. The owner or operator of a CAIR NO_x Ozone Season unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for NO_x concentration, NO_x emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO_x mass emissions and heat input in accordance with §75.31(b)(2) or (c)(3) of this chapter, section 2.4 of appendix D to part 75 of this chapter, or section 2.5 of appendix E to part 75 of this chapter, as applicable.
- (d) Prohibitions.
- (1) No owner or operator of a CAIR NO_x Ozone Season unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 96.375.

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- (2) No owner or operator of a CAIR NO_x Ozone Season unit shall operate the unit so as to discharge, or allow to be discharged, NO_x emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.
- (3) No owner or operator of a CAIR NO_x Ozone Season unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_x mass emissions discharged into the atmosphere or heat input, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.
- (4) No owner or operator of a CAIR NO_x Ozone Season unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:
 - (i) During the period that the unit is covered by an exemption under § 96.305 that is in effect;
 - (ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or
 - (iii) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with §96.371(d)(3)(i).
- (e) Long-term cold storage. The owner or operator of a CAIR NO_x Ozone Season unit is subject to the applicable provisions of part 75 of this chapter concerning units in long-term cold storage.

§ 96.371 Initial certification and recertification procedures.

- (a) The owner or operator of a CAIR NO_x Ozone Season unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 96.370(a)(1) if the following conditions are met:
 - (1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and
 - (2) The applicable quality-assurance and quality-control requirements of § 75.21 of this chapter and appendix B, appendix D, and appendix E to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.
- (b) The recertification provisions of this section shall apply to a monitoring system under §96.370(a)(1) exempt from initial certification requirements under paragraph (a) of this section.
- (c) If the Administrator has previously approved a petition under § 75.17(a) or (b) of this chapter for apportioning the NO_x emission rate measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.12 or § 75.17 of this chapter, the CAIR

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designated representative shall resubmit the petition to the Administrator under § 96.375(a) to determine whether the approval applies under the CAIR NO_x Ozone Season Trading Program.

- (d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR NO_x Ozone Season unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (i.e., a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under § 96.370(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.
- (1) Requirements for initial certification. The owner or operator shall ensure that each continuous monitoring system under §96.370(a)(1)(including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 96.370(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.
 - (2) Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 96.370(a)(1) that may significantly affect the ability of the system to accurately measure or record NO_x mass emissions or heat input rate or to meet the quality assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include: Replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flow meter systems, and any excepted NO_x monitoring system under appendix E to part 75 of this chapter, under § 96.370(a)(1) are subject to the recertification requirements in § 75.20(g)(6) of this chapter.
 - (3) Approval process for initial certification and recertification. Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under §96.370(a)(1). For recertifications, replace the words "certification" and "initial certification" with the word "recertification", replace the word "certified" with the word "recertified," and follow the procedures in §§ 75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.
 - (i) Notification of certification. The CAIR designated representative shall submit to the permitting authority, the appropriate EPA Regional Office, and the Administrator written notice of the dates of certification testing, in accordance with § 96.373.
 - (ii) Certification application. The CAIR designated representative shall submit to the permitting authority a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

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- (iii) Provisional certification date. The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CAIR NO_x Ozone Season Trading Program for a period not to exceed 120 days after receipt by the permitting authority of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the permitting authority does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the permitting authority.
- (iv) Certification application approval process. The permitting authority will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CAIR NO_x Ozone Season Trading Program.
 - (A) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.
 - (B) Incomplete application notice. If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section. The 120-day review period shall not begin before receipt of a complete certification application.
 - (C) Disapproval notice. If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.
 - (D) Audit decertification. The permitting authority or, for a CAIR NO_x Ozone Season opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under sub-

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part IIII of this part, the Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 96.372(b).

- (v) Procedures for loss of certification. If the permitting authority or the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:
 - (A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:
 - (1) For a disapproved NO_x emission rate (i.e., NO_x-diluent) system, the maximum potential NO_x emission rate, as defined in § 72.2 of this chapter.
 - (2) For a disapproved NO_x pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO_x and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.
 - (3) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO₂ concentration or the minimum potential O₂ concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.
 - (4) For a disapproved fuel flow meter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.
 - (5) For a disapproved excepted NO_x monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential NO_x emission rate, as defined in § 72.2 of this chapter.
 - (B) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.
 - (C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the permitting authority's or the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.
- (e) Initial certification and recertification procedures for units using the low mass emission excepted methodology under § 75.19 of this chapter. The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.
- (f) Certification/recertification procedures for alternative monitoring systems. The CAIR designated representative of each unit for which the owner or operator intends to use an alternative monitoring

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system approved by the Administrator and, if applicable, the permitting authority under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of § 75.20(f) of this chapter.

§ 96.372 Out of control periods.

- (a) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable missing data procedures in subpart D or subpart H of, or appendix D or appendix E to, part 75 of this chapter.
- (b) Audit decertification. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under §96.371 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the permitting authority or, for a CAIR NO_x Ozone Season opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the permitting authority or the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 96.371 for each disapproved monitoring system.

§ 96.373 Notifications.

The CAIR designated representative for a CAIR NO_x Ozone Season unit shall submit written notice to the permitting authority and the Administrator in accordance with § 75.61 of this chapter.

§ 96.374 Recordkeeping and reporting.

- (a) General provisions. The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under §75.73 of this chapter, and the requirements of § 96.310(e)(1).
- (b) Monitoring plans. The owner or operator of a CAIR NO_x Ozone Season unit shall comply with requirements of § 75.73(c) and (e) of this chapter and, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, §§ 96.383 and 96.384(a).
- (c) Certification applications. The CAIR designated representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under § 96.371, including the information required under § 75.63 of this chapter.
- (d) Quarterly reports. The CAIR designated representative shall submit quarterly reports, as follows:

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- (1) If the CAIR NO_x Ozone Season unit is subject to an Acid Rain emissions limitation or a CAIR NO_x emissions limitation or if the owner or operator of such unit chooses to report on an annual basis under this subpart, the CAIR designated representative shall meet the requirements of subpart H of part 75 of this chapter (concerning monitoring of NO_x mass emissions) for such unit for the entire year and shall report the NO_x mass emissions data and heat input data for such unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:
 - (i) For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering May 1, 2008 through June 30, 2008;
 - (ii) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 96.370(b), unless that quarter is the third or fourth quarter of 2007 or the first quarter of 2008, in which case reporting shall commence in the quarter covering May 1, 2008 through June 30, 2008;
 - (iii) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the calendar quarter corresponding to the date specified in § 96.384(b); and
 - (iv) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a CAIR NO_x Ozone Season opt-in unit under subpart IIII of this part, the calendar quarter corresponding to the date on which the CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program as provided in §96.384(g).
- (2) If the CAIR NO_x Ozone Season unit is not subject to an Acid Rain emissions limitation or a CAIR NO_x emissions limitation, then the CAIR designated representative shall either:
 - (i) Meet the requirements of subpart H of part 75 (concerning monitoring of NO_x mass emissions) for such unit for the entire year and report the NO_x mass emissions data and heat input data for such unit in accordance with paragraph (d)(1) of this section; or
 - (ii) Meet the requirements of subpart H of part 75 for the control period (including the requirements in §75.74(c) of this chapter) and report NO_x mass emissions data and heat input data (including the data described in § 75.74(c)(6) of this chapter) for such unit only for the control period of each year and report, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:
 - (A) For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering May 1, 2008 through June 30, 2008;
 - (B) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 96.370(b), unless that date is not during a control period, in which case reporting shall commence in the quarter that includes May 1 through June 30 of the first control period after such date;

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- (C) Notwithstanding paragraphs (d)(2)(ii)(A) and (2)(ii)(B) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the calendar quarter corresponding to the date specified in § 96.384(b); and
 - (D) Notwithstanding paragraphs (d)(2)(ii)(A) and (2)(ii)(B) of this section, for a CAIR NO_x Ozone Season opt-in unit under subpart IIII of this part, the calendar quarter corresponding to the date on which the CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program as provided in §96.384(g).
- (3) The CAIR designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.73(f) of this chapter.
 - (4) For CAIR NO_x Ozone Season units that are also subject to an Acid Rain emissions limitation or the CAIR NO_x Annual Trading Program, CAIR SO₂ Trading Program, or Hg Budget Trading Program, quarterly reports shall include the applicable data and information required by subparts F through I of part 75 of this chapter as applicable, in addition to the NO_x mass emission data, heat input data, and other information required by this subpart.
- (e) Compliance certification. The CAIR designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:
- (1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications;
 - (2) For a unit with add-on NO_x emission controls and for all hours where NO_x data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate NO_x emissions; and
 - (3) For a unit that is reporting on a control period basis under paragraph (d)(2)(ii) of this section, the NO_x emission rate and NO_x concentration values substituted for missing data under subpart D of part 75 of this chapter are calculated using only values from a control period and do not systematically underestimate NO_x emissions.

§ 96.375 Petitions.

- (a) Except as provided in paragraph (b)(2) of this section, the CAIR designated representative of a CAIR NO_x Ozone Season unit that is subject to an Acid Rain emissions limitation may submit a petition under §75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.
- (b) (1) The CAIR designated representative of a CAIR NO_x Ozone Season unit that is not subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative

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to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by both the permitting authority and the Administrator.

- (2) The CAIR designated representative of a CAIR NO_x Ozone Season unit that is subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to a requirement concerning any additional continuous emission monitoring system required under § 75.72 of this chapter. Application of an alternative to any such requirement is in accordance with this subpart only to the extent that the petition is approved in writing by both the permitting authority and the Administrator.

Subpart IIII—CAIR NO_x Ozone Season Opt-in Units

§ 96.380 Applicability.

A CAIR NO_x Ozone Season opt-in unit must be a unit that:

- (a) Is located in the State;
- (b) Is not a CAIR NO_x Ozone Season unit under § 96.304 and is not covered by a retired unit exemption under § 96.305 that is in effect;
- (c) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;
- (d) Has or is required or qualified to have a title V operating permit or other federally enforceable permit; and
- (e) Vents all of its emissions to a stack and can meet the monitoring, recordkeeping, and reporting requirements of subpart HHHH of this part.

§ 96.381 General.

- (a) Except as otherwise provided in §§ 96.301 through 96.304, §§ 96.306 through 96.308, and subparts BBBB and CCCC and subparts FFFF through HHHH of this part, a CAIR NO_x Ozone Season opt-in unit shall be treated as a CAIR NO_x Ozone Season unit for purposes of applying such sections and subparts of this part.
- (b) Solely for purposes of applying, as provided in this subpart, the requirements of subpart HHHH of this part to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, such unit shall be treated as a CAIR NO_x Ozone Season unit before issuance of a CAIR opt-in permit for such unit.

§ 96.382 CAIR designated representative.

Any CAIR NO_x Ozone Season opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, located at the same source as one or more CAIR NO_x Ozone Season units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR NO_x Ozone Season units.

§ 96.383 Applying for CAIR opt-in permit.

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- (a) Applying for initial CAIR opt-in permit. The CAIR designated representative of a unit meeting the requirements for a CAIR NO_x Ozone Season opt-in unit in § 96.380 may apply for an initial CAIR opt-in permit at any time, except as provided under § 96.386 (f) and (g), and, in order to apply, must submit the following:
- (1) A complete CAIR permit application under § 96.322;
 - (2) A certification, in a format specified by the permitting authority, that the unit:
 - (i) Is not a CAIR NO_x Ozone Season unit under § 96.304 and is not covered by a retired unit exemption under § 96.305 that is in effect;
 - (ii) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;
 - (iii) Vents all of its emissions to a stack; and
 - (iv) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 96.322;
 - (3) A monitoring plan in accordance with subpart HHHH of this part;
 - (4) A complete certificate of representation under § 96.313 consistent with § 96.382, if no CAIR designated representative has been previously designated for the source that includes the unit; and
 - (5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR NO_x Ozone Season allowances under §96.388(b) or §96.388(c) (subject to the conditions in §§96.384(h) and 96.386(g)). If allocation under §96.388(c) is requested, this statement shall include a statement that the owners and operators of the unit intend to repower the unit before January 1, 2015 and that they will provide, upon request, documentation demonstrating such intent.
- (b) Duty to reapply.
- (1) The CAIR designated representative of a CAIR NO_x Ozone Season opt-in unit shall submit a complete CAIR permit application under § 96.322 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or the permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.
 - (2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR NO_x Ozone Season opt-in unit from the CAIR NO_x Ozone Season Trading Program in accordance with § 96.186 or the unit becomes a CAIR NO_x Ozone Season unit under § 96.304, the CAIR NO_x Ozone Season opt-in unit shall remain subject to the requirements for a CAIR NO_x Ozone Season opt-in unit, even if the CAIR designated representative for the CAIR NO_x Ozone Season opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

§ 96.384 Opt-in process.

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The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under § 96.383 is submitted in accordance with the following:

- (a) Interim review of monitoring plan. The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under § 96.383. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_x emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with subpart HHHH of this part. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.
- (b) Monitoring and reporting.
 - (1) (i) If the permitting authority and the Administrator determine that the monitoring plan is sufficient under paragraph (a) of this section, the owner or operator shall monitor and report the NO_x emissions rate and the heat input of the unit and all other applicable parameters, in accordance with subpart HHHH of this part, starting on the date of certification of the appropriate monitoring systems under subpart HHHH of this part and continuing until a CAIR opt-in permit is denied under § 96.384(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR NO_x Ozone Season Trading Program in accordance with § 96.386.
 - (ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the CAIR NO_x Ozone Season Trading Program under § 96.384(g), during which period monitoring system availability must not be less than 90 percent under subpart HHHH of this part and the unit must be in full compliance with any applicable State or Federal emissions or emissions-related requirements.
- (2) To the extent the NO_x emissions rate and the heat input of the unit are monitored and reported in accordance with subpart HHHH of this part for one or more control periods, in addition to the control period under paragraph (b)(1)(ii) of this section, during which control periods monitoring system availability is not less than 90 percent under subpart HHHH of this part and the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements and which control periods begin not more than 3 years before the unit enters the CAIR NO_x Ozone Season Trading Program under § 96.384(g), such information shall be used as provided in paragraphs (c) and (d) of this section.
- (c) Baseline heat input. The unit's baseline heat rate shall equal:
 - (1) If the unit's NO_x emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's total heat input (in mmBtu) for the control period; or
 - (2) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, the average of the amounts of the unit's total heat input (in mmBtu) for the control period under paragraphs (b)(1)(ii) and (b)(2) of this section.
- (d) Baseline NO_x emission rate. The unit's baseline NO_x emission rate shall equal:
 - (1) If the unit's NO_x emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's NO_x emissions rate (in lb/mmBtu) for the control period;

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- (2) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit does not have add-on NO_x emission controls during any such control periods, the average of the amounts of the unit's NO_x emissions rate (in lb/mmBtu) for the control period under paragraphs (b)(1)(ii) and (b)(2) of this section; or
 - (3) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit has add-on NO_x emission controls during any such control periods, the average of the amounts of the unit's NO_x emissions rate (in lb/mmBtu) for such control periods during which the unit has add-on NO_x emission controls.
- (e) Issuance of CAIR opt-in permit. After calculating the baseline heat input and the baseline NO_x emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR NO_x Ozone Season opt-in unit in § 96.380 and meets the elements certified in § 96.383(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR NO_x Ozone Season opt-in unit unless the source already has a compliance account.
- (f) Issuance of denial of CAIR opt-in permit. Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR NO_x Ozone Season opt-in unit in § 96.380 or meets the elements certified in § 96.383(a)(2), the permitting authority will issue a denial of a CAIR opt-in permit for the unit.
- (g) Date of entry into CAIR NO_x Ozone Season Trading Program. A unit for which an initial CAIR opt-in permit is issued by the permitting authority shall become a CAIR NO_x Ozone Season opt-in unit, and a CAIR NO_x Ozone Season unit, as of the later of May 1, 2009 or May 1 of the first control period during which such CAIR opt-in permit is issued.
- (h) Repowered CAIR NO_x Ozone Season pt-in unit.
 - (1) If CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR NO_x Ozone Season opt-in unit of CAIR NO_x Ozone Season allowances under § 96.388(c) and such unit is repowered after its date of entry into the CAIR NO_x Ozone Season Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR NO_x Ozone Season opt-in unit replacing the original CAIR NO_x Ozone Season opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.
 - (2) Notwithstanding paragraphs (c) and (d) of this section, as of the date of start-up under paragraph (h)(1) of this section, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline NO_x emission rate as the original CAIR NO_x Ozone Season opt-in unit, and the original CAIR NO_x Ozone Season opt-in unit shall no longer be treated as a CAIR NO_x Ozone Season opt-in unit or a CAIR NO_x Ozone Season unit.

§ 96.385 CAIR opt-in permit contents.

- (a) Each CAIR opt-in permit will contain:

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- (1) All elements required for a complete CAIR permit application under § 96.322;
 - (2) The certification in § 96.383(a)(2);
 - (3) The unit's baseline heat input under § 96.384(c);
 - (4) The unit's baseline NO_x emission rate under § 96.384(d);
 - (5) A statement whether the unit is to be allocated CAIR NO_x Ozone Season allowances under §96.388(b) or §96.388(c) (subject to the conditions in §§96.384(h) and 96.386(g));
 - (6) A statement that the unit may withdraw from the CAIR NO_x Ozone Season Trading Program only in accordance with § 96.386; and
 - (7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 96.387.
- (b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 96.302 and, upon recordation by the Administrator under subpart FFFF or GGGG of this part or this subpart, every allocation, transfer, or deduction of CAIR NO_x Ozone Season allowances to or from the compliance account of the source that includes a CAIR NO_x Ozone Season opt-in unit covered by the CAIR opt-in permit.
- (c) The CAIR opt-in permit shall be included, in a format specified by the permitting authority, in the CAIR permit for the source where the CAIR NO_x Ozone Season opt-in unit is located and in a title V operating permit or other federally enforceable permit for the source.

§ 96.386 Withdrawal from CAIR NO_x Ozone Season Trading Program.

Except as provided under paragraph (g) of this section, a CAIR NO_x Ozone Season opt-in unit may withdraw from the CAIR NO_x Ozone Season Trading Program, but only if the permitting authority issues a notification to the CAIR designated representative of the CAIR NO_x Ozone Season opt-in unit of the acceptance of the withdrawal of the CAIR NO_x Ozone Season opt-in unit in accordance with paragraph (d) of this section.

- (a) Requesting withdrawal. In order to withdraw a CAIR NO_x Ozone Season opt-in unit from the CAIR NO_x Ozone Season Trading Program, the CAIR designated representative of the CAIR NO_x Ozone Season opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of September 30 of a specified calendar year, which date must be at least 4 years after September 30 of the year of entry into the CAIR NO_x Ozone Season Trading Program under §96.384(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.
- (b) Conditions for withdrawal. Before a CAIR NO_x Ozone Season opt-in unit covered by a request under paragraph (a) of this section may withdraw from the CAIR NO_x Ozone Season Trading Program and the CAIR opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:
- (1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR NO_x Ozone Season opt-in unit must meet the requirement to hold CAIR NO_x Ozone Season allowances under § 96.306(c) and cannot have any excess emissions.

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- (2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of the source that includes the CAIR NO_x Ozone Season opt-in unit CAIR NO_x Ozone Season allowances equal in amount to and allocated for the same or a prior control period as any CAIR NO_x Ozone Season allowances allocated to the CAIR NO_x Ozone Season opt-in unit under § 96.388 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR NO_x Ozone Season units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR NO_x Ozone Season opt-in unit may submit a CAIR NO_x Ozone Season allowance transfer for any remaining CAIR NO_x Ozone Season allowances to another CAIR NO_x Ozone Season Allowance Tracking System in accordance with subpart GGGG of this part.
- (c) Notification.
 - (1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of CAIR NO_x Ozone Season allowances required), the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_x Ozone Season opt-in unit of the acceptance of the withdrawal of the CAIR NO_x Ozone Season opt-in unit as of midnight on September 30 of the calendar year for which the withdrawal was requested.
 - (2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_x Ozone Season opt-in unit that the CAIR NO_x Ozone Season opt-in unit's request to withdraw is denied. Such CAIR NO_x Ozone Season opt-in unit shall continue to be a CAIR NO_x Ozone Season opt-in unit.
- (d) Permit amendment. After the permitting authority issues a notification under paragraph (c)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the CAIR permit covering the CAIR NO_x Ozone Season opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (c)(1) of this section. The unit shall continue to be a CAIR NO_x Ozone Season opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR NO_x Ozone Season Trading Program concerning any control periods for which the unit is a CAIR NO_x Ozone Season opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.
- (e) Reapplication upon failure to meet conditions of withdrawal. If the permitting authority denies the CAIR NO_x Ozone Season opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.
- (f) Ability to reapply to the CAIR NO_x Ozone Season Trading Program. Once a CAIR NO_x Ozone Season opt-in unit withdraws from the CAIR NO_x Ozone Season Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under § 96.383 for such CAIR NO_x Ozone Season opt-in unit before the date that is 4 years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under § 96.384.
- (g) Inability to withdraw. Notwithstanding paragraphs (a) through (f) of this section, a CAIR NO_x Ozone Season opt-in unit shall not be eligible to withdraw from the CAIR NO_x Ozone Season Trading Program if the CAIR designated representative of the CAIR NO_x Ozone Season opt-in

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unit requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to the CAIR NO_x Ozone Season opt-in unit of CAIR NO_x Ozone Season allowances under § 96.388(c).

§ 96.387 Change in regulatory status.

- (a) Notification. If a CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR NO_x Ozone Season opt-in unit's regulatory status, within 30 days of such change.
- (b) Permitting authority's and Administrator's actions.
 - (1) If a CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under §96.304, the permitting authority will revise the CAIR NO_x Ozone Season opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under § 96.323, and remove the CAIR opt-in permit provisions as of the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304.
 - (2) (i) The Administrator will deduct from the compliance account of the source that includes the CAIR NO_x Ozone Season opt-in unit that becomes a CAIR NO_x Ozone Season unit under §96.304, CAIR NO_x Ozone Season allowances equal in amount to and allocated for the same or a prior control period as:
 - (A) Any CAIR NO_x Ozone Season allowances allocated to the CAIR NO_x Ozone Season opt-in unit under § 96.388 for any control period after the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304; and
 - (B) If the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304 is not September 30, the CAIR NO_x Ozone Season allowances allocated to the CAIR NO_x Ozone Season opt-in unit under § 96.388 for the control period that includes the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.
 - (ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR NO_x Ozone Season unit that becomes a CAIR NO_x Ozone Season unit under § 96.304 contains the CAIR NO_x Ozone Season allowances necessary for completion of the deduction under paragraph (b)(2)(i) of this section.
- (3) (i) For every control period after the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under §96.304, the CAIR NO_x Ozone Season opt-in unit will be allocated CAIR NO_x Ozone Season allowances under §96.342.
- (ii) If the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304 is not September 30, the following amount of CAIR NO_x Ozone Season allowances will be allocated to the CAIR NO_x Ozone Season opt-in unit (as a CAIR NO_x Ozone Season unit) under § 96.342 for the control period that

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includes the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304:

- (A) The amount of CAIR NO_x Ozone Season allowances otherwise allocated to the CAIR NO_x Ozone Season opt-in unit (as a CAIR NO_x Ozone Season unit) under § 96.342 for the control period multiplied by;
- (B) The ratio of the number of days, in the control period, starting with the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304, divided by the total number of days in the control period; and
- (C) Rounded to the nearest whole allowance as appropriate.

§ 96.388 CAIR NO_x Ozone Season allowance allocations to CAIR NO_x Ozone Season opt-in units.

(a) Timing requirements.

- (1) When the CAIR opt-in permit is issued under § 96.384(e), the permitting authority will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under § 96.384(g), in accordance with paragraph (b) or (c) of this section.
 - (2) By no later than July 31 of the control period after the control period in which a CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under § 96.384(g) and July 31 of each year thereafter, the permitting authority will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR NO_x opt-in unit, in accordance with paragraph (b) or (c) of this section.
- (b) Calculation of allocation. For each control period for which a CAIR NO_x Ozone Season opt-in unit is to be allocated CAIR NO_x Ozone Season allowances, the permitting authority will allocate in accordance with the following procedures:
- (1) The heat input (in mmBtu) used for calculating the CAIR NO_x Ozone Season allowance allocation will be the lesser of:
 - (i) The CAIR NO_x Ozone Season opt-in unit's baseline heat input determined under § 96.384(c); or
 - (ii) The CAIR NO_x Ozone Season opt-in unit's heat input, as determined in accordance with subpart HHHH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under § 96.384(g).
 - (2) The NO_x emission rate (in lb/mmBtu) used for calculating CAIR NO_x Ozone Season allowance allocations will be the lesser of:
 - (i) The CAIR NO_x Ozone Season opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under § 96.384(d) and multiplied by 70 percent; or

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- (ii) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x Ozone Season opt-in unit at any time during the control period for which CAIR NO_x Ozone Season allowances are to be allocated.
- (3) The permitting authority will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit in an amount equaling the heat input under paragraph (b)(1) of this section, multiplied by the NO_x emission rate under paragraph (b)(2) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.
- (c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under §96.383(a)(5)) providing for, allocation to a CAIR NO_x Ozone Season opt-in unit of CAIR NO_x Ozone Season allowances under this paragraph (subject to the conditions in §§ 96.384(h) and 96.386(g)), the permitting authority will allocate to the CAIR NO_x Ozone Season opt-in unit as follows:
 - (1) For each control period in 2009 through 2014 for which the CAIR NO_x Ozone Season opt-in unit is to be allocated CAIR NO_x Ozone Season allowances,
 - (i) The heat input (in mmBtu) used for calculating CAIR NO_x Ozone Season allowance allocations will be determined as described in paragraph (b)(1) of this section.
 - (ii) The NO_x emission rate (in lb/mmBtu) used for calculating CAIR NO_x Ozone Season allowance allocations will be the lesser of:
 - (A) The CAIR NO_x Ozone Season opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under § 96.384(d); or
 - (B) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x Ozone Season opt-in unit at any time during the control period in which the CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under § 96.384(g).
 - (iii) The permitting authority will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit in an amount equaling the heat input under paragraph (c)(1)(i) of this section, multiplied by the NO_x emission rate under paragraph (c)(1)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.
 - (2) For each control period in 2015 and thereafter for which the CAIR NO_x Ozone Season opt-in unit is to be allocated CAIR NO_x Ozone Season allowances,
 - (i) The heat input (in mmBtu) used for calculating the CAIR NO_x Ozone Season allowance allocations will be determined as described in paragraph (b)(1) of this section.
 - (ii) The NO_x emission rate (in lb/mmBtu) used for calculating the CAIR NO_x Ozone Season allowance allocation will be the lesser of:
 - (A) 0.15 lb/mmBtu;
 - (B) The CAIR NO_x Ozone Season opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under § 96.384(d); or

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- (C) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x Ozone Season opt-in unit at any time during the control period for which CAIR NO_x Ozone Season allowances are to be allocated.
 - (iii) The permitting authority will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit in an amount equaling the heat input under paragraph (c)(2)(i) of this section, multiplied by the NO_x emission rate under paragraph (c)(2)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.
- (d) Recordation.
- (1) The Administrator will record, in the compliance account of the source that includes the CAIR NO_x Ozone Season opt-in unit, the CAIR NO_x Ozone Season allowances allocated by the permitting authority to the CAIR NO_x Ozone Season opt-in unit under paragraph (a)(1) of this section.
 - (2) By September 1, of the control period in which a CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under §96.384(g), and September 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR NO_x Ozone Season opt-in unit, the CAIR NO_x Ozone Season allowances allocated by the permitting authority to the CAIR NO_x Ozone Season opt-in unit under paragraph (a)(2) of this section.

Authority: *T.C.A. §§68-201-105 and 4-5-201 et. seq.*

This notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of October, 2006. (10-19-06)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.S.T. on the 18th day December 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of -TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

SUBSTANCE OF PROPOSED RULE

Rule 1200-13-01-.02 Eligibility is amended by deleting paragraphs (2), (3), (6), and (7) in their entirety and subsequent paragraphs renumbered accordingly.

Authority: *T.C.A. §§4-5-202, 4-5-203, 71-5-105, 71-5-109, Executive Order No. 23.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of October, 2006. (10-18-06)

ANNOUNCEMENTS

DEPARTMENT OF HEALTH - 1200 BOARD OF ALCOHOL AND DRUG ABUSE COUNSELORS DIVISION OF HEALTH RELATED BOARDS

There will be a hearing before the Tennessee Board of Alcohol and Drug Abuse Counselors to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 68-24-605. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Division of Health Related Board's Conference Room on the Third Floor of the Heritage Place Building located at 227 French Landing, Nashville, TN at 2:30 p.m. (CST) on the 20th day of December, 2006.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact: Jerry Kosten, Regulations Manager, Division of Health Related Boards, 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 1200-30-1-.05, Licensure Process, is amended by deleting parts (1) (b) 8., (1) (b) 9. and (1) (b) 10. in their entirety and substituting instead the following language, and is further amended by deleting paragraph (6) in its entirety and renumbering paragraph (7) as the new paragraph (6), so that as amended, the new parts (1) (b) 8., (1) (b) 9. and (1) (b) 10. shall read:

- (1) (b) 8. An applicant shall submit a copy of his original licensure or its equivalent with the license number from the original issuing state in effect at the time the original was issued.
- (1) (b) 9. An applicant must submit a copy of his most recent renewal certificate or its equivalent from the current issuing state with the number and expiration date.
- (1) (b) 10. The applicant shall provide the Board with a copy of current licensing statutes and rules from all states where the applicant is currently licensed.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-24-605, and 68-24-606.

Rule 1200-30-1-.12, Continuing Education, is amended by deleting subparagraph (3) (c) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (3) (c) shall read:

- (3) (c) All applications for approval must be submitted to the Board at least thirty (30) days prior to a regularly scheduled meeting of the Board that precedes the educational offering. The Board shall review each application and shall rule on whether the offering(s) in whole or in

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part shall be accepted as valid for the purposes of the continuing education requirements of this rule. The decision of the Board shall be final in all such matters.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-24-605, and 68-24-606.*

Rule 1200-30-1-.15, Disciplinary Actions and Civil Penalties, is amended by adding the following language as new paragraph (8), and renumbering the present paragraph (8) as the new paragraph (9):

- (8) Reconsiderations and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, and 68-24-605.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 6th day of October, 2006. (10-05-06)

RULEMAKING HEARINGS

DEPARTMENT OF HEALTH - 1200 TENNESSEE MEDICAL LABORATORY BOARD DIVISION OF HEALTH RELATED BOARDS

There will be a hearing before the Tennessee Medical Laboratory Board to consider the promulgation of a new rule and amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-29-103, 68-29-104, 68-29-105, 68-29-127, and 68-29-129. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Division of Health Related Board's Conference Room on the Third Floor of the Heritage Place Building located at 227 French Landing, Nashville, TN at 2:30 p.m. (CST) on the 19th day of December, 2006.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 1200-6-1-.03 Necessity of Licensure, is amended by deleting the catchline in its entirety and substituting instead the catchline Necessity of Licensure and Licensure Exemptions, and is further amended by adding the following language as new paragraph (3):

- (3) The following personnel are exempt from the licensure requirements imposed pursuant to the "Tennessee Medical Laboratory Act":
 - (a) All personnel performing the testing described in rule 1200-3-.02 (6) in the laboratory or portion of the otherwise licensed laboratory exempted from licensure pursuant to that rule.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-29-103, 68-29-104, and 68-29-105.

Rule 1200-6-1-.12 Continuing Education, is amended by adding the following introductory language immediately after the catchline, so that as amended, the catchline and the introductory language shall read:

1200-6-1-.12 CONTINUING EDUCATION. Continuing education is planned, organized learning acts acquired during licensure to maintain, improve or expand a licensee's knowledge and skills relevant to medical laboratory practice in order for the licensee to develop new knowledge and skills relevant to the practice, education or theory development to improve the safety and welfare of the public.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 68-29-105.

RULEMAKING HEARINGS

Rule 1200-6-1-.22 Qualifications, Responsibilities and Duties of Testing Personnel, is amended by deleting subparagraph (1) (a) in its entirety and substituting instead the following language, and is further amended by inserting the following language as subparagraph (1) (b) and renumbering the remaining subparagraphs accordingly, so that as amended the new subparagraphs (1) (a) and (1) (b) shall read:

- (1) (a) To become licensed as a medical laboratory technologist an applicant must:
 1. Submit satisfactory evidence of successfully completing and passing a national certifying examination and being nationally certified at the technologist level by either the ASCP, NCA, NRCC, NRM, ABB, AMT or any other national certifying agency recognized by the Board (Successful completion of the Health and Human Services proficiency examination in clinical laboratory science does not meet this criteria for licensure); and
 2. In addition to possessing the national certification required by part 1. of this subparagraph, submit satisfactory evidence of having met one (1) of the following educational criteria:
 - (i) A baccalaureate degree in medical technology or in one of the biological, chemical or physical sciences, and completion of a medical laboratory technologist training program that was, at the time of graduation, either
 - (I) approved or under the auspice of the National Accrediting Agency for Clinical Laboratory Sciences (NAACLS); or
 - (II) approved by a national accrediting agency acceptable to the Board; or
 - (III) completed in a specialty program conducted by a hospital or other institution approved pursuant to Rule 1200-6-2-.04; or
 - (ii) A baccalaureate degree from an accredited college/university, completion of an accredited MLT/CLT training program and three (3) years of full time clinical laboratory work experience as defined in subparagraph (1) (g); the individual must have completed science coursework equivalent to that required in a laboratory science education program as defined by subparagraph (1) (f); or
 - (iii) A baccalaureate degree from an accredited college/university, completion of an official military laboratory procedures course of at least fifty (50) weeks duration in residence and have held the military enlisted occupational specialty of Medical Laboratory Specialist, and three (3) years of full time clinical laboratory work experience as defined in subparagraph (1) (g); the individual must have completed science coursework equivalent to that required in a laboratory science education program as defined by subparagraph (1) (f); or
 - (iv) A baccalaureate degree from an accredited college/university and five (5) years of full time clinical laboratory work experience as defined in subparagraph (1) (g); the individual must have completed science coursework equivalent to that required in a laboratory science education program as defined by subparagraph (1) (f).
- (1) (b) Those applicants for medical laboratory technologist licensure who do not possess a baccalaureate degree may be approved for licensure upon having submitted to the Board's

RULEMAKING HEARINGS

administrative office directly from the national certifying agency satisfactory proof of having successfully completed on or before September 1, 1997 (the date on which CLIA required at a minimum an associate's degree or its equivalent for those who would be performing high complexity testing and the date on which the Board ceased providing the state licensure examination) a medical laboratory technologists national certification examination and the applicant has submitted to the Board's administrative office directly from the issuing authorities satisfactory proof that the applicant met one (1) of the following criteria:

1. The applicant had, on or before September 1, 1997, received a passing grade on a Health and Human Services proficiency examination in clinical laboratory science and had completed five (5) years of full time clinical laboratory work experience as defined in subparagraph (1) (g); or
2. The applicant had, on or before September 1, 1997, completed a minimum of ninety (90) semester hours including science course work equivalent to that required in a laboratory science education program as defined by (1) (f) of this rule; and had, on or before September 1, 1997, completed a medical laboratory technologist training program that was approved at the time of graduation by the National Accrediting Agency for Clinical Laboratory Sciences (NAACLS) or a national accrediting agency acceptable to the Board.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-29-103, 68-29-105, and 68-29-118.

Rule 1200-6-3-.02 Licensing Procedures is amended by deleting the catchline in its entirety and substituting instead the catchline Licensing Procedures and Licensure Exemptions, and is further amended by adding the following language as new paragraph (6):

- (6) Pursuant to T.C.A. § 68-29-104(8) the Board hereby exempts the following laboratories (or portions of otherwise licensed laboratories) and the personnel performing tests in those laboratories (or portions of otherwise licensed laboratories) from the requirements imposed pursuant to the "Tennessee Medical Laboratory Act":
 - (a) Any laboratory (or portion of an otherwise licensed laboratory) which is operated by the Tennessee Department of Health and in which the only testing on human specimens is that which is required pursuant to an investigation ordered by or in cooperation with the State Epidemiologist or law enforcement agency the results of which are reported only to the State Epidemiologist, CDC or law enforcement officials as required by federal law.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-29-103, 68-29-104, and 68-29-105.

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NEW RULE

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1200-6-1-.18 Unethical Conduct

1200-6-1-.18 UNETHICAL CONDUCT.

- (1) Unethical conduct shall include, but not be limited to:
 - (a) Failing to exercise reasonable diligence to prevent partners, associates, and employees from engaging in conduct which would violate any provisions of the Tennessee Medical Laboratory Act or any rule, regulation, or order of the Board.
 - (b) Penalizing medical laboratory personnel for reporting violations of any provisions of the Tennessee Medical Laboratory Act or any rule, regulation, or order of the Board.
- (2) Violations of this rule shall subject a licensee to disciplinary action, as provided in Rule 1200-6-1-.15.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-29-105, 68-29-127, and 68-29-129.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 16th day of October, 2006. (10-09-06)

RULEMAKING HEARINGS

BOARD OF MEDICAL EXAMINERS - 0880 COMMITTEE ON PHYSICIAN ASSISTANTS

There will be a hearing before the Tennessee Board of Medical Examiners' Committee on Physician Assistants to consider the promulgation of an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, and 63-19-104. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Division of Health Related Board's Conference Room on the Third Floor of the Heritage Place Building located at 227 French Landing, Nashville, TN at 2:30 p.m. (CST) on the 18th day of December, 2006.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243, (615) 532-4397.

SUBSTANCE OF PROPOSED RULE

AMENDMENT

Rule 0880-3-.12 Continuing Education, is amended by deleting subparagraph (1) (a) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (a) shall read:

- (1) (a) All physician assistants must, within a two (2) year period prior to the application for license renewal, complete one hundred (100) hours of continuing medical education satisfactory to the Committee.
 - 1. At least one (1) Category I hour of the required continuing education hours shall address prescribing practices.
 - 2. The division of hours between Category I and Category II continuing medical education must be consistent with the requirements of the N.C.C.P.A. as described on the most current N.C.C.P.A. "Continuing Medical Education Logging Form."

Authority T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, and 63-19-104.

The notice of rulemaking set out herein was properly filed in the Department of State on the 16th day of October, 2006. (10-10-06)

RULEMAKING HEARINGS

BOARD OF NURSING - 1000

There will be a hearing before the Tennessee Board of Nursing to consider the promulgation of amendments to rules, new rules, and repeal of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-7-207. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Division of Health Related Board's Conference Room on the Third Floor of the Heritage Place Building located at 227 French Landing, Nashville, TN at 2:30 p.m. (CST) on the 19th day of December, 2006.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, 227 Fr. Landing, Ste. 300, Heritage Pl., MetroCenter, Nashville, TN 37243, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact: Jerry Kosten, Regulations Manager, Division of Health Related Boards, 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

CHAPTER 1000-1

RULES AND REGULATIONS OF REGISTERED NURSES

Rule 1000-1-.04, Discipline of Licensees, Unauthorized Practice of Professional Nursing, Civil Penalties, Screening Panels, Subpoenas, Advisory Rulings, Declaratory Orders, and Assessment of Costs, is amended by deleting subparagraph (4) (c) in its entirety and substituting instead the following language, and is further amended by deleting subparagraph (4) (d) in its entirety, so that as amended, the new subparagraph (4) (c) shall read:

- (4) (c) The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-115, 63-7-116, and 63-7-207.

Rule 1000-1-.11, Definitions, is amended by deleting subparagraph (8) (c) in its entirety and substituting instead the following language, and is further amended by deleting subparagraph (8) (d) in its entirety, and is further amended by deleting paragraph (15) in its entirety and substituting instead the following language, and is further amended by deleting paragraph (22) in its entirety, so that as amended, the new introductory language, the new subparagraph (8) (c) and the new paragraph (15) shall read:

1000-1-.11 DEFINITIONS. As used in Chapters 1 through 5 of Rule 1000, the following terms and acronyms shall have the following meanings ascribed to them:

RULEMAKING HEARINGS

- (8) (c) Practical: A program leading to a certificate in practical nursing conducted in a regionally accredited academic institution, except for the existing practical nursing program at Blount County Memorial Hospital.
- (15) Examination: Refers to the National Council Licensure Examination (NCLEX[®]) or its predecessor examination.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 63-7-207.

Rule 1000-1-.12, Fees, is amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, the new paragraph (2) shall read:

- (2) Except for the Biennial State Regulatory Fee, all fees paid to the Tennessee Board of Nursing are non-refundable.

Authority: T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-7-106, and 63-7-207.

Rule 1000-1-.13, Unprofessional Conduct and Negligence, Habits or Other Cause, is amended by inserting the following language as new subparagraphs (1) (w) and (1) (x), and renumbering the current subparagraph (1) (w) as subparagraph (1) (y):

- (1) (w) Failure to respond to a request from the Board to submit documentation of continued competence requirements, as provided in Rule 1000-1-.14;
- (1) (x) Failure to successfully complete continued competence requirements, as provided in Rule 1000-1-.14; and

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-115, and 63-7-207.

CHAPTER 1000-2 RULES AND REGULATIONS OF LICENSED PRACTICAL NURSES

Rule 1000-2-.04, Discipline of Licensees, Unauthorized Practice of Practical Nursing, Civil Penalties, Screening Panels, Subpoenas, Advisory Rulings, Declaratory Orders, and Assessment of Costs, is amended by deleting subparagraph (4) (c) in its entirety and substituting instead the following language, and is further amended by deleting subparagraph (4) (d) in its entirety, so that as amended, the new subparagraph (4) (c) shall read:

- (4) (c) The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-115, 63-7-116, and 63-7-207.

Rule 1000-2-.11, Definitions, is amended by deleting subparagraph (8) (c) in its entirety and substituting instead the following language, and is further amended by deleting subparagraph (8) (d) in its entirety, and is further amended by deleting paragraph (14) in its entirety and substituting instead the following language, and is further amended by deleting paragraph (21) in its entirety, so that as amended, the new introductory language, the new subparagraph (8) (c) and the new paragraph (14) shall read:

RULEMAKING HEARINGS

1000-2-.11 DEFINITIONS. As used in Chapters 1 through 5 of Rule 1000, the following terms and acronyms shall have the following meanings ascribed to them:

- (8) (c) Practical: A program leading to a certificate in practical nursing conducted in a regionally accredited academic institution, except for the existing practical nursing program at Blount County Memorial Hospital.
- (14) Examination: Refers to the National Council Licensure Examination (NCLEX[®]) or its predecessor examination.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 63-7-207.

Rule 1000-2-.12, Fees, is amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, the new paragraph (2) shall read:

- (2) Except for the Biennial State Regulatory Fee, all fees paid to the Tennessee Board of Nursing are non-refundable.

Authority: T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-7-111, and 63-7-207.

Rule 1000-2-.13, Unprofessional Conduct and Negligence, Habits or Other Cause, is amended by inserting the following language as new subparagraphs (1) (v) and (1) (w), and renumbering the current subparagraph (1) (v) as subparagraph (1) (x):

- (1) (v) Failure to respond to a request from the Board to submit documentation of continued competence requirements, as provided in Rule 1000-2-.14;
- (1) (w) Failure to successfully complete continued competence requirements, as provided in Rule 1000-2-.14; and

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-115, and 63-7-207.

Rule 1000-4-.06, Fees, is amended by adding the following language as new paragraph (3):

- (3) Except for the State Regulatory Fee (biennial), all fees paid to the Tennessee Board of Nursing are non-refundable.

Authority: T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-7-106, 63-7-123, 63-7-126, and 63-7-207.

RULEMAKING HEARINGS

NEW RULES

CHAPTER 1000-5 GENERAL RULES GOVERNING SCHOOLS OF NURSING

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1000-5-.01	Purpose of Nursing Education Standards
1000-5-.02	Nursing Education Standards
1000-5-.03	Nursing Education Program Requirements
1000-5-.04	Additional Required Components of Graduate Education Programs Preparing Advanced Practice Nurses
1000-5-.05	Approval of a Nursing Education Program
1000-5-.06	Continuing Approval of a Nursing Education Program
1000-5-.07	Denial, Withdrawal and Reinstatement of Approval, or Closing of a Nursing Education Program

1000-5-.01 PURPOSE OF NURSING EDUCATION STANDARDS. The purpose of nursing education standards is to:

- (1) Ensure that graduates of nursing education programs are prepared for safe and effective nursing practice; and
- (2) Provide criteria for the development, evaluation and improvement of new and established nursing education programs; and
- (3) Assure candidates are educationally prepared for practice, licensure, certification and recognition at the appropriate level.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-117, and 63-7-207.

1000-5-.02 NURSING EDUCATION STANDARDS. Institutions desiring to conduct a school of professional nursing, or a school of practical nursing, on ground, distance, online or via other electronic means shall meet the standards of this rule. This includes nursing programs for initial licensure and nursing programs that do not lead to initial licensure.

- (1) The purpose and outcomes of the nursing program shall be consistent with T.C.A. §§ 63-7-101, et seq., other relevant state and federal statutes, and all rules and regulations of the Board.
- (2) The purpose and outcomes of the nursing program shall be consistent with generally accepted standards of nursing practice appropriate for graduates of the type of nursing program offered.
- (3) The input of consumers and the public shall be considered in developing and evaluating the purpose and outcomes of the program.
- (4) The nursing program shall implement a comprehensive, systematic plan for ongoing evaluation that is based on program outcomes and incorporates continuous improvement.
- (5) The curriculum shall provide diverse, didactic and clinical learning experiences consistent with program outcomes.

RULEMAKING HEARINGS

- (6) Faculty and students shall participate in program planning, implementation, evaluation, and continuous improvement.
- (7) The nursing program administrator shall be a professionally and academically qualified Registered Nurse with institutional authority and administrative responsibility for the program.
- (8) Professionally, academically and clinically qualified nurse faculty shall be sufficient in number and expertise to accomplish program outcomes and quality improvement.
- (9) The fiscal, human, physical, clinical and technical learning resources shall be adequate to support program processes, security and outcomes.
- (10) Program information communicated by the nursing program shall be accurate, complete, consistent and readily available.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-117, and 63-7-207.

1000-5-.03 NURSING EDUCATION PROGRAM REQUIREMENTS. The organization and administration of the nursing education program shall be consistent with T.C.A. §§ 63-7-101, et seq., other relevant state and federal statutes, and all rules and regulations of the Board. The nursing education program shall be an integral part of a governing academic institution that is in good standing with and is accredited by a body that is recognized by the U.S. Secretary of Education. The following minimal criteria serve to support implementation of the nursing education standards:

- (1) Evaluation—A comprehensive nursing education program self-evaluation shall be performed annually for quality improvement and shall include but not be limited to:
 - (a) Students' achievement of program outcomes; and
 - (b) Evidence of adequate program resources including fiscal, physical, human, clinical and technical learning resources; and the availability of clinical sites and the viability of those sites to meet the objectives of the program; and
 - (c) Multiple measures of program outcomes for graduates, i.e. National Council Licensure Examination (NCLEX) pass rates, student and/or employer surveys, and successful completion of national certification programs; and
 - (d) Evidence that accurate program information for consumers is readily available, i.e. fees and admission criteria, which can be made available by oral, written and electronic means; and
 - (e) The head of the academic institution and the administration support program outcomes; and
 - (f) Program administrator and program faculty meet Board qualifications and are sufficient to achieve program outcomes; and
 - (g) Evidence that the academic institution assures security of student information.
- (2) Curriculum

RULEMAKING HEARINGS

- (a) The curriculum of the nursing education program shall enable the student to develop the nursing knowledge, skills and competencies necessary for the level, scope and standards of nursing practice consistent with the level of licensure. The curriculum shall include:
1. Content regarding legal and ethical issues, history and trends in nursing and health care, and professional responsibilities; and
 2. Experiences that promote the development of clinical judgment, leadership and management skills, and professional socialization consistent with the level of licensure. This includes demonstration of the ability to supervise others and provide leadership of the profession; and
 3. Learning experiences and methods of instruction, including distance education methods, consistent with the written curriculum plan; and
 4. Coursework including, but not limited to:
 - (i) Content in the biological, physical, social and behavioral sciences to provide a foundation for safe and effective nursing practice; and
 - (ii) Didactic content and supervised clinical experience in the prevention of illness and the promotion, restoration, and maintenance of health in clients across the lifespan and in a variety of clinical settings, to include:
 - (I) Using informatics to communicate, manage knowledge, mitigate error and support decision-making; and
 - (II) Employing evidence-based practice to integrate best research with clinical expertise and client values for optimal care, including skills to identify and apply best practices to nursing care; and
 - (III) Providing client-centered, culturally competent care.
 - I. Respecting client differences, values, preferences and expressed needs.
 - II. Involving clients in decision-making and care management.
 - III. Coordinating and managing continuous client care.
 - IV. Promoting healthy lifestyles for clients and populations; and
 - (IV) Working in interdisciplinary teams to cooperate, collaborate, communicate and integrate client care and health promotion; and
 - (V) Participating in quality improvement processes to measure client outcomes, identify hazards and errors, and develop changes in processes of client care.
- (b) Supervised clinical practice shall include development of skill in making clinical judgments, management and care of groups of clients, and delegation to and supervision of other health care providers.

RULEMAKING HEARINGS

1. Clinical experience shall be comprised of sufficient hours to meet these standards, be supervised by qualified faculty and ensure students' ability to practice at an entry level.
 2. All student clinical experiences, including those with preceptors, shall be directed by nursing faculty.
- (c) Delivery of instruction by distance education methods must be consistent with the program curriculum plan including supervised clinical practice pursuant to subpart (2) (a) 4. (ii) above, and enable students to meet the goals, competencies and objectives of the educational program and standards of the Board. Delivery of more than fifty percent (50%) of the total didactic nursing instruction by distance and/or online education methods is not acceptable for programs leading to initial licensure.
- (3) Students
- (a) Students shall be provided the opportunity to acquire and demonstrate the knowledge, skills and abilities for safe and effective nursing practice, in theory and clinical experience with faculty oversight.
 - (b) All policies relevant to applicants and students shall be available in writing.
 - (c) Students shall be required to meet the health standards and criminal background checks as required in the state.
 - (d) Students shall receive faculty instruction, advisement and oversight.
 - (e) Students shall be held accountable for the integrity of their work.
 - (f) Students shall be high school graduates or the equivalent.
- (4) Administrator qualifications
- (a) Administrator qualifications in a program preparing for Licensed Practical Nurse licensure shall include:
 1. A current, active and unencumbered Registered Nurse license or privilege to practice and meet requirements in the state where the program is approved and/or accredited; and
 2. A minimum of a baccalaureate degree in nursing and a master's degree in nursing or related field, or a nursing doctorate; and
 4. Directors of nursing programs approved before the effective date of these rules who do not have a master's degree in nursing shall submit a plan to the Board for completion of the master's degree; and
 5. Educational preparation and at least three (3) years of full-time experience in teaching and learning principles for adult education, including curriculum development and administration, and at least two (2) years of clinical experience; and
 6. A current knowledge of nursing practice at the practical/vocational level.

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- (b) Administrator qualifications in a program preparing for Registered Nurse licensure shall include:
 - 1. A current, active and unencumbered Registered Nurse license or privilege to practice and meet requirements in the state where the program is approved and/or accredited; and
 - 2. A doctoral degree in nursing, or a doctoral degree in a related field combined with either a master's degree in a clinical nursing specialty or a post-graduate certificate in a clinical nursing specialty; and
 - 3. Directors of nursing programs approved before the effective date of these rules who do not have a doctoral degree in nursing shall submit a plan to the Board for completion of the doctoral degree; and
 - 4. Educational preparation or experience in teaching and learning principles for adult education, including curriculum development and administration, and at least two (2) years of clinical experience; and
 - 5. A current knowledge of registered nursing practice.
- (c) Administrator (program head) qualifications in a program preparing for Advanced Practice Nurse certification shall include:
 - 1. A current, active and unencumbered registered Nurse license or privilege to practice and meet requirements in the state where the program is approved and/or accredited;
 - 2. Graduate preparation consistent with national accreditation standards. It is recommended that the master's or doctoral degree be in the specified Advanced Practice Nurse category; and
 - 3. Directors of nursing programs approved before the effective date of these rules who do not have a doctoral degree in nursing shall submit a plan to the Board for completion of the doctoral degree; and
 - 4. Educational preparation or experience in teaching and learning principles for adult education, including curriculum development and administration, and at least two (2) years of clinical experience; and
 - 5. A current knowledge of Advanced Practice Nurse practice.
- (5) Faculty
 - (a) There shall be a sufficient number of qualified faculty to meet the objectives and purposes of the nursing education program.
 - (b) The nursing faculty shall hold a current, active and unencumbered Registered Nurse license or privilege to practice and meet requirements in the state where the program is approved.
 - (c) Clinical faculty shall hold a license or privilege to practice and meet requirements in the state where the program is approved.

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- (d) Qualifications for nursing faculty who teach in a program leading to licensure as a Licensed Practical Nurse are to:
 - 1. Have a minimum of a baccalaureate degree with a major in nursing; and
 - 2. Faculty of nursing programs approved before the effective date of these rules who do not have a baccalaureate degree in nursing shall submit a plan to the Board for completion of the baccalaureate degree; and
 - 3. Have three (3) years of clinical experience; and
 - 4. Have preparation in teaching and learning principles for adult education, including curriculum implementation; and
 - 5. Have current knowledge of Licensed Practical Nurse practice.
- (e) Qualifications for nursing faculty who teach in a program leading to licensure as a Registered Nurse are to:
 - 1. Have a minimum of a master's degree with a major in nursing or a nursing doctorate degree; and
 - 2. Have clinical experience; however a minimum of three (3) years experience is recommended; and
 - 3. Have preparation in teaching and learning principles for adult education, including curriculum development and implementation; and
 - 4. Have current knowledge of Registered Nurse practice.
- (f) Qualifications for nursing faculty who teach in program specialty specific courses leading to licensure as an Advanced Practice Nurse are to:
 - 1. Have a minimum of a master's degree in nursing in a related clinical specialty, or in the specified Advanced Practice Nurse category; and
 - 2. Have a certificate or privilege to practice as an Advanced Practice Nurse; and
 - 3. Have clinical experience; however a minimum of three (3) years experience is recommended; and
 - 4. Have preparation in teaching and learning principles for adult education, including curriculum development and implementation; and
 - 5. Have current knowledge of Advanced Practice Nurse practice.
- (g) Interdisciplinary faculty who teach non-clinical nursing courses shall have advanced preparation appropriate to these areas of content.
- (h) Preceptors – Clinical preceptors shall have demonstrated competencies related to the area of assigned clinical teaching responsibilities and will serve as a role model and educator to the student. Clinical preceptors may be used to enhance faculty-directed clinical learn-

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ing experiences, provided they are used as an adjunct to faculty-directed clinical learning experiences and not as a substitute for clinical faculty in sufficient numbers.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-117, 63-7-118, and 63-7-207.

1000-5-.04 ADDITIONAL REQUIRED COMPONENTS OF GRADUATE EDUCATION PROGRAMS PREPARING ADVANCED PRACTICE NURSES.

- (1) Licensure Requirement for Advanced Practice Nurse Students – Each student enrolled in an Advanced Practice Nurse program shall be currently licensed or privileged to practice as a Registered Nurse in Tennessee or another state prior to involvement in clinical practice as a student Advanced Practice Nurse.
- (2) Education programs offered by an accredited college or university that offers a graduate degree with a concentration in the advanced nursing practice specialty; or post-master's certificate programs offered by an accredited college or university shall include the following components:
 - (a) Clinical supervision must be congruent with current national specialty organizations and nursing accrediting body standards applicable to the Advanced Practice Nurse role and specialty.
 - (b) The curriculum is congruent with national standards for graduate level and advanced practice nursing education and is consistent with nationally recognized Advanced Practice Nurse roles and specialties, and includes but is not limited to:
 1. Graduate nursing program core courses; and
 2. An advanced practice nursing core, including legal, ethical and professional responsibilities of the Advanced Practice Nurse; and
 3. Coursework focusing on the Advanced Practice Nurse role and specialty.
 - (c) The curriculum meets the following criteria:
 1. Consistent with competencies of the specific areas of practice.
 2. Dual track Advanced Practice Nurse programs (preparing for two [2] specialties) or combined nurse practitioner/clinical nurse specialist shall include content and clinical experience in both functional roles and specialties.
 3. Instructional track/major has a minimum of five hundred (500) supervised clinical hours for each specialty track or five hundred (500) anesthesia cases. The supervised experience is directly related to the knowledge and role of the specialty and category.
 4. There shall be provisions for the recognition of prior learning and advanced placement in the curriculum for individuals who hold a master's in nursing who are seeking preparation in a different role and specialty. Post-master's nursing students shall complete the requirements of the Master's Advanced Practice Nurse program through a formal graduate level certificate or master level track in the desired role and specialty. Post-master's students must master the same Advanced Practice Nurse outcome criteria as the master-level students and are required to complete a minimum of five hundred (500) supervised clinical hours.

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- (d) A lead faculty member who is educated and nationally certified in the same specialty area and holds a certificate as an Advanced Practice Nurse shall coordinate the educational component for the role and specialty in the Advanced Practice Nurse program.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-117, 63-7-118, and 63-7-207.

1000-5-.05 APPROVAL OF A NURSING EDUCATION PROGRAM. Before establishing or operating a new nursing education program, the program shall complete the process described in paragraphs (2) and (3). It is the Board's intent that paragraph (2) is the first step in the approval process and that paragraph (3) is the second step in the approval process

(1) Types of Approval

- (a) Initial approval is granted a new school that has not been in operation long enough to graduate its first class but demonstrates its eligibility for full approval. Any agency or institution wishing to establish a school of nursing shall comply with this rule. This type of approval is essentially a tentative approval that is granted to a new school. The program is reviewed each year; and after the first students are graduated, the program is considered for full approval.
- (b) Full approval is granted a school that has met the requirements that are set forth by the Board and has demonstrated its ability to provide an educational program which meets the Board's standards. Full approval may be granted to any school of nursing, having an initial or conditional approval and thereafter for a period of two (2) years, if, in the opinion of the Board, it meets the minimum requirements of the Board and has demonstrated that it is providing an adequate educational program.
- (c) Conditional approval is accorded a school which has failed to maintain minimum standards of the Board and has been notified that it must meet the Board's requirements within one (1) year from the date of notice. A school previously having initial or full approval may be granted conditional approval, if, in the opinion of the Board, it fails to meet the major educational criteria and/or curriculum standards. If within a period of one (1) year the school has not demonstrated evidence of meeting the major criteria and/or standards, conditional approval shall be withdrawn.

(2) Application to Board—The proposed program shall provide the following information to the Board:

- (a) Reasons for establishing the program and a proposed timeline for initiating and expanding the program.
- (b) Results of a needs assessment, including identification of potential students and employment opportunities for program graduates.
- (c) Identification of sufficient financial and other resources, including anticipated revenues and expenses projected for a five (5) year period.
- (d) Governing institution approval and support.
- (e) Community support.
- (f) Type of educational program proposed.

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- (g) Clinical opportunities and availability of resources.
 - (h) Availability of qualified faculty.
 - (i) A pool of available students.
- (3) Approval for admission of students—The proposed program shall provide verification to the Board that the following program components and processes have been completed prior to the Board authorizing the program to admit students:
- (a) Employ director and sufficient faculty to develop program
 - 1. Qualifications of faculty – There shall be a provision made for faculty who hold a master's degree or higher with a formal clinical specialization to teach in the respective clinical specialty areas.
 - 2. Conditions of the program may require additional personnel.
 - (b) Overview of total curriculum including:
 - 1. Content
 - 2. Schedule (course sequence)
 - 3. Course descriptions
 - 4. Contracts for clinical sites
 - 5. Program evaluation plan
 - 6. Board consultation with a site review
 - 7. Course syllabi for first (1st) year with identified timeline for submission of syllabi for next years.
 - (c) Student policies for admission, progression, retention and graduation.
 - (d) Site visit conducted by Board's executive director or his/her designee.
- (4) Program review
- (a) The Board will consider the findings of the site visit.
 - (b) The Board will consider any reports and/or research provided by the Tennessee Center for Nursing in making its decision on the approval of an application for a nursing education program.
 - (c) All aspects of the application shall be reviewed at a regularly scheduled meeting of the Board, and the institution will be advised of the Board's action.
- (5) Full approval—The Board shall approve the program upon:
- (a) Graduation of the first (1st) class; and

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- (b) Completion of a Board program survey visit concurrent with graduation of the first (1st) class or eligibility for the National Council Licensure Examination, or with established eligibility for a national certification in an Advanced Practice Nurse role and specialty; and
- (c) Submission of the program's ongoing evaluation plan and data; and if requested by the Board, periodic reports from the new program regarding initial program operations; and
- (d) A satisfactory survey report that verifies that the program is in compliance with the board's nursing education standards in Rule .02.
- (e) NCLEX pass rate for initial attempts of at least eighty-five percent (85%) calculated on a calendar year basis.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-117, 63-7-118, and 63-7-207.

1000-5-.06 CONTINUING APPROVAL OF A NURSING EDUCATION PROGRAM.

- (1) At least once every eight (8) years via an onsite survey visit by the Board's executive director or designee, previously approved nursing education programs will be evaluated for continuing approval. The Board shall monitor and analyze various sources of information regarding program performance on an annual basis, including but not limited to:
 - (a) Periodic survey visits and/or reports.
 - (b) Accreditation visits and reports.
 - (c) Results of ongoing program evaluations.
 - (d) Other sources of information regarding achievement of program outcomes, including:
 - 1. Student retention and attrition.
 - 2. Faculty turnover.
 - 3. Complaints regarding program.
 - 4. Trend data regarding National Council Licensure Examination performance.
 - 5. Trend data regarding success in obtaining national certification for Advanced Practice Nurse roles and specialties.
- (2) Continuing approval will be granted upon the board's verification that the program is in compliance with the Board's nursing education standards in Rule .02.
 - (a) If the Board determines that an approved nursing education program is not meeting the criteria set forth in these regulations, the governing academic institution shall be given a reasonable period of time to submit an action plan and to correct the identified program deficiencies.
 - (b) The Board may grant conditional approval when it determines that a program is not fully meeting approval standards.

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Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-117, 63-7-118, 63-7-119, and 63-7-207.

1000-5-.07 DENIAL, WITHDRAWAL AND REINSTATEMENT OF APPROVAL, OR CLOSING OF A NURSING EDUCATION PROGRAM.

- (1) The Board may deny an application for initial approval if it determines that a new nursing education program will be unable to meet the standards for nursing education.
- (2) The Board may withdraw approval if it determines that:
 - (a) A nursing education program fails substantially to meet the standards for nursing education; or
 - (b) A nursing education program fails to correct the identified deficiencies within the time specified.
- (3) The Board may reinstate approval if the program submits evidence of compliance with nursing education standards within the specified time frame.
- (4) Closing of a School of Nursing — When the controlling board of an institution contemplates the closing of an approved school of nursing, it shall notify the Board to this effect.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-117, 63-7-118, 63-7-119, and 63-7-207.

REPEALS

Rule 1000-1-.05, Schools - Approval, is repealed.
Rule 1000-1-.06, Schools - Philosophy, Purpose, Administration, Organization, and Finance, is repealed.
Rule 1000-1-.07, Schools - Faculty, is repealed.
Rule 1000-1-.08, Schools - Students, is repealed.
Rule 1000-1-.09, Schools - Curriculum, Instruction, Evaluation, is repealed.
Rule 1000-1-.10, Schools - Educational Facilities, is repealed.
Rule 1000-2-.05, Schools - Approval, is repealed.
Rule 1000-2-.06, Schools - Philosophy, Purpose, Administration, Organization, and Finance, is repealed.
Rule 1000-2-.07, Schools - Faculty, is repealed.
Rule 1000-2-.08, Schools – Students, is repealed.
Rule 1000-2-.09, Schools - Curriculum, Instruction, Evaluation, is repealed.
Rule 1000-2-.10, Schools - Educational Facilities, is repealed.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 63-7-207.

The notice of rulemaking set out herein was properly filed in the Department of State on the 18th day of October, 2006. (10-15-06)

RULEMAKING HEARINGS

BOARD OF DISPENSING OPTICIANS - 0480

There will be a hearing before the Tennessee Board of Dispensing Opticians to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-14-101. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Division of Health Related Board's Conference Room on the Third Floor of the Heritage Place Building located at 227 French Landing, Nashville, TN at 2:30 p.m. (CST) on the 18th day of December, 2006.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 0480-1-.01, Definitions, is amended by inserting the following language as new paragraph (8) and renumbering the remaining paragraphs accordingly:

- (8) Direct Supervision - The requirement that the supervising licensed dispensing optician, optometrist, or ophthalmologist direct, coordinate, review, inspect, and approve each act or service performed by an apprentice who is training to prepare, fit and dispense ophthalmic materials.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-14-101, 63-14-102, and 63-14-103.

Rule 0480-1-.07, Application Review, Approval, Denial, Interviews, is amended by deleting part (9) (a) 2. in its entirety and substituting instead the following language, so that as amended, the new part (9) (a) 2. shall read:

- (9) (a) 2. The applicant fails to apply and/or register for applicable examinations within six (6) months after being notified of eligibility.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-14-101, 63-14-103, and 63-14-107.

Rule 0480-1-.08, Examinations, is amended by deleting part (1) (c) 9. in its entirety, and is further amended by adding the following language as new subparagraph (1) (d), and is further amended by deleting paragraph (2) but not its subparagraphs and substituting instead the following language, so that as amended, the new subparagraph (1) (d) and the new paragraph (2) but not its subparagraphs shall read:

- (1) (d) The Tennessee Jurisprudence Examination, which is graded on a scale of 0-100 with a minimum passing score of ninety (90).

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1. The following subjects may be included on the Tennessee Jurisprudence Examination:
 - (i) Tennessee Code Annotated, Title 63, Chapters 2 and 14; and
 - (ii) Official Compilation, Rules and Regulations of the State of Tennessee, Chapter 0480-1.
 2. The applicable statutes and regulations can be accessed at the Board's Internet web page or are available upon request from the Board's administrative office.
 3. The format of the examination shall be "open-book."
 4. The Board shall include the Tennessee jurisprudence examination with its application materials.
 5. The applicant shall complete the Tennessee jurisprudence examination and return it to the Board's administrative office.
 6. If the Board determines that the applicant has failed to successfully complete the Tennessee jurisprudence examination, the applicant will be mailed another examination and he/she must continue to retake the examination until it has been successfully completed before the application will be deemed complete and presented to the Board for consideration.
- (2) Except for the Tennessee Jurisprudence Examination, admission to, application for, and the fee required to sit for the examinations are governed by and must be submitted directly to the testing agencies.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-14-101, and 63-14-103.

Rule 0480-1-.14, Apprenticeship Training Program, is amended by deleting subparagraph (1) (c), paragraph (2) and subparagraph (5) (a) in their entirety and substituting instead the following language, and is further amended by adding the following language as new parts (5) (c) 1. and (5) (c) 2., and is further amended by deleting subparts (6) (c) 1. (xv) and (6) (c) 1. (xvi) in their entirety and renumbering the remaining subparts accordingly, so that as amended, the new subparagraph (1) (c), the new paragraph (2), the new subparagraph (5) (a), and the new parts (5) (c) 1. and (5) (c) 2. shall read:

- (1) (c) Except as provided in Rule 0480-1-.04 (3) of this rule, only training that occurs on or after the training program start date shall be counted towards meeting the three (3) year minimum requirement.
- (2) Apprenticeship training must be supervised by a dispensing optician, optometrist, or ophthalmologist who has been licensed for at least three (3) years and who is currently licensed in good standing by the State of Tennessee.
 - (a) The supervisor shall work at the premises where the apprenticeship training is conducted
 - (b) The supervisor shall provide supervision at all times in accordance with T.C.A. § 63-14-103 (a) and (f).

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- (5) (a) The Board will disallow the apprenticeship training of an apprentice whose supervisor is supervising more than two (2) apprentices concurrently. Such training shall not be considered as time toward fulfilling the five thousand, two hundred and fifty (5,250) hour requirement.
- (5) (c) 1. The semi-annual evaluation report must be received in the Board's administrative office no later than thirty (30) days after the six (6) month training period has ended or the training period shall be disallowed and not considered as time toward fulfilling the five thousand, two hundred and fifty (5,250) hour requirement
- (5) (c) 2. If two (2) semi-annual evaluation reports are not received by the Board's administrative office within thirty (30) days after the applicable training periods have ended, the Board will rescind its approval of the apprenticeship training program. The apprentice will not receive credit for the two (2) training periods for which the semi-annual evaluation reports were not submitted or were received by the Board's administrative office later than thirty (30) days after the applicable training period. In order to continue the apprenticeship training program, a new application for an apprenticeship training program must be submitted.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-14-101, and 63-14-103.

Rule 0480-1-.19 Board Meetings, Officers, Consultants, Declaratory Orders, and Screening Panels, is amended by adding the following language as new paragraph (9):

- (9) The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-14-101, 63-14-104, and 63-14-111.

The notice of rulemaking set out herein was properly filed in the Department of State on the 16th day of October, 2006. (10-11-06)

RULEMAKING HEARINGS

BOARD OF OSTEOPATHIC EXAMINATION - 1050 COUNCIL OF CERTIFIED PROFESSIONAL MIDWIFERY

There will be a hearing before the Tennessee Board of Osteopathic Examination's Council of Certified Professional Midwifery to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, 63-29-109, 63-29-112, 63-29-114, 63-29-116, and Public Chapter 568 of the Public Acts of 2006. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Division of Health Related Board's Conference Room on the Third Floor of the Heritage Place Building located at 227 French Landing, Nashville, TN at 2:30 p.m. (CST) on the 8th day of January, 2007.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 1050-5-.09 Certification Renewal, is amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, the new paragraph (2) shall read:

- (2) Prior to the due date for renewal, certificate holders will have a renewal application form mailed to them at the last address provided by them to the Council. Failure to receive such notification does not relieve the individual of the responsibility of timely meeting all requirements for renewal. To be eligible for renewal a certificate holder must submit to the Division of Health Related Boards on or before the certificate holder's expiration date the following:
 - (a) A completed and signed renewal application form.
 - (b) The renewal and state regulatory fees as provided in Rule 1050-5-.06.
 - (c) Attestation of compliance with NARM continuing education requirements so that current NARM certification in good standing is maintained.
 - (d) Attestation of maintaining current CPR certification, as provided in rule 1050-5-.05.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, 63-29-109, 63-29-112, and 63-29-116.

RULEMAKING HEARINGS

Rule 1050-5-.12 Continuing Education, is amended by deleting paragraphs (2) and (3) in their entirety and renumbering the remaining paragraphs accordingly.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, 63-29-109, 63-29-116, and Public Chapter 568 of the Public Acts of 2006.*

Rule 1050-5-.19 Council Officers, Consultants, Records, Declaratory Orders, and Screening Panels, is amended by deleting paragraph (5) in its entirety and substituting instead the following language, so that as amended, the new paragraph (5) shall read:

- (5) The Council authorizes the member who chaired the Council for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, 63-29-114, and 63-29-116.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 6th day of October, 2006. (10-03-06)

RULEMAKING HEARINGS

BOARD OF PODIATRIC MEDICAL EXAMINERS - 1155

There will be a hearing before the Tennessee Board of Podiatric Medical Examiners to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-3-106. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Division of Health Related Board's Conference Room on the Third Floor of the Heritage Place Building located at 227 French Landing, Nashville, TN at 2:30 p.m. (CST) on the 19th day of December, 2006.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 1155-2-.08, Examinations, is amended by inserting the following language as new paragraph (4) and renumbering the existing paragraph (4) as paragraph (5):

- (4) Time limit for effectiveness of scores
 - (a) The effectiveness of any examination required by this rule for purposes of measuring competency and fitness to practice podiatry and therefore eligibility for licensure is five (5) years from the date on which the examination was successfully completed. This is the date on which the applicant took the exam and not the date on which passing scores were reported to the Board.
 - (b) An applicant's test score on an examination required by this rule which was taken more than five (5) years before application was made for licensure in Tennessee will be considered by the Board on a case by case basis after the applicant appears before the Board for an interview.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, 63-3-109, and 63-6-111.

Rule 1155-2-.12, Continuing Education, is amended by inserting the following language as new subparagraph (1) (b) and renumbering the present subparagraphs (1) (b) and (1) (c) as subparagraphs (1) (c) and (1) (d):

- (1) (b) Beginning January 1, 2008, at least one (1) hour of the fifteen (15) hour requirement every other calendar year shall be a course designed specifically to address prescribing practices.

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Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and 63-3-116.

Rule 1155-2-.19, Board Meetings, Officers, Consultants, Records, Declaratory Orders, Advisory Rulings and Screening Panels, is amended by deleting subparagraph (3) (b) in its entirety and renumbering the present subparagraph (3) (c) as subparagraph (3) (b), and is further amended by adding the following language as new paragraph (8):

- (8) Stays and Reconsiderations – The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§ 4-5-107, 4-5-202, 4-5-204, 63-3-106, and 63-3-119.

The notice of rulemaking set out herein was properly filed in the Department of State on the 6th day of October, 2006. (10-04-06)

WILDLIFE PROCLAMATIONS

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

PROCLAMATION 06-22 STATEWIDE PROCLAMATION ON THE COMMERCIAL TAKING OF FISH AND TURTLES

Pursuant to the authority granted by Title 70, Tennessee Code Annotated, and Sections 70-1-206, 70-2-205, 70-4-107, and 70-4-119 thereof, the Tennessee Wildlife Resources Commission hereby proclaims the following regulations pertaining to the commercial taking of fish and turtles, hereinafter called commercial fishing.

Commercial fishing is hereby authorized in accordance with the following provisions, except where expressly forbidden by law. All commercial fishing gear must meet the specifications and be fished in the manner provided for in Sections I, II, III, IV, and V of this proclamation.

SECTION I. WATERS OPEN TO COMMERCIAL FISHING

For purposes of this proclamation, "river" means that body of water confined within the identifiable banks. At high river stage, oxbows, sloughs, and backwaters accessible by boat from the river are open to commercial fishing, but are considered private water and may be fished only with permission of the landowner.

RIVERS

The following are open year-round to trotlines, hoop nets, fyke nets, pound nets, trap nets, gill nets, trammel nets, slat baskets, cast nets and turtle traps unless otherwise specified.

1. CLINCH RIVER - fishing authorized only downstream from Melton Hill Dam. Gill and trammel nets prohibited.
2. EMORY RIVER - fishing authorized only downstream from the Harriman Bridge. Gill and trammel nets prohibited.
3. FORKED DEER RIVER - except that portion of the Middle Fork lying within the boundaries of the Chickasaw National Wildlife Refuge.
4. FRENCH BROAD RIVER
5. HARPETH RIVER - fishing authorized only downstream from State Hwy. 49 Bridge, except that trotlines may be fished upstream of the bridge.
6. HATCHIE RIVER
7. HIWASSEE RIVER - fishing authorized only downstream from U.S. 11 Bridge (Charleston).

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8. HOLSTON RIVER
9. LOOSAHATCHIE RIVER - fishing authorized only downstream from the New Raleigh-Millington Road Bridge.
10. MISSISSIPPI RIVER - (except that portion from the Mississippi-Tennessee line upstream to Mississippi River Mile 745, marked by the upper, or northern, tip of Hickman Bar, which is closed. This closure includes McKellar Lake and Wolf River embayment). Wardlow's Pocket and Wardlow's Pocket Chute (except those portions lying within the boundaries of the Chickasaw National Wildlife Refuge), Heath-right Pocket, Cold Creek, Cold Creek Chute, lying within the boundaries of Anderson Tully WMA in Lauderdale County are open; all other ponds, lakes, arms, sloughs, bayous, and pockets within the WMA are closed. All sturgeon greater than 30 inches must be returned immediately to the water.
11. NOLICHUCKY RIVER
12. OBION RIVER
13. RED RIVER - fishing authorized only downstream from U.S. 41A Bridge , except that trotlines may be fished upstream of the bridge.
14. STONES RIVER - fishing closed from confluence with Cumberland River upstream, except that trotlines may be fished upstream of the Cumberland River confluence.
15. WOLF RIVER - Only the section from Germantown Bridge upstream is open to commercial fishing. Gill nets and trammel nets are prohibited. The section upstream of Bateman Bridge in Fayette County is open for trotlines only.
16. CUMBERLAND RIVER - As listed in Section I. RESERVOIRS except from Cordell Hull Dam upstream is closed.
17. TENNESSEE RIVER - As listed in Section I. RESERVOIRS.
18. DUCK RIVER - That portion of the Duck River from its confluence with Blue Creek at approximate DRM 13.2 downstream to the Hustburg pipeline crossing is open year-round to trotlines, hoop nets, and slat baskets. The Duck River from DRM 4.0 downstream to the Hustburg pipeline crossing at approximate DRM 1.4 is open to gill nets and trammel nets from December 1 through January 15. The rest of Duck River downstream is open year-round to all legal commercial gear types. Duck River upstream from its confluence with Blue Creek is closed to all commercial fishing.

RESERVOIRS

Group A: The following reservoirs are open year-round unless otherwise specified to trotlines, hoop nets, fyke nets, pound nets, trap nets, gill nets, trammel nets, slat baskets, cast nets and turtle traps. The reservoir boundary for commercial fishing regulations is the full pool elevation unless otherwise specified.

1. BARKLEY
2. CHEATHAM - Commercial fishermen must contract with TWRA and abide by the contract provisions as determined by TWRA in order to commercial fish.

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3. CHICKAMAUGA
4. DOUGLAS - Entanglement gear (gill and trammel nets) and hoop nets are prohibited above Point 14 from January through June. Entanglement gear (gill and trammel nets) is prohibited from the mouth to the headwaters of Indian, McGuire, Muddy and Flat Creeks from October through February.
5. GUNTERSVILLE
6. NICKAJACK
7. PICKWICK
8. JOHN SEVIER
9. DAVY CROCKETT (Greene County)

Group B: The following reservoirs are open year-round except for specific restrictions as listed:

1. CHEROKEE - trammel nets and gill nets are prohibited. The taking and possession of blue catfish and paddlefish by commercial fishing methods are prohibited.
2. KENTUCKY - commercial fishing gear and sport fishing trotlines are prohibited in the New Johnsonville Steamplant Harbor and within 50 yards of the Danville Railroad Bridge dikes (approximate TRM 78.3).

The Duck River embayment from DRM 4.0 upstream to its confluence with Blue Creek at approximate DRM 13.2 is closed year-round to all commercial fishing gear types except trotlines, hoop nets, and slat baskets. The Duck River embayment from the Hustburg pipeline crossing at approximate DRM 1.4 upstream to DRM 4.0 is closed to commercial fishing with gill nets and trammel nets except from December 1 through January 15 each year.

Paddlefish harvest and all entanglement type commercial fishing gear with mesh sizes greater than 4 inches is prohibited year-round in the Big Sandy River Embayment (all waters west of a line drawn from Pace Point to the mouth of Eagle Creek). Additionally, unattended entanglement type commercial fishing gear is prohibited from November 25 through March 15 in waters of the U.S. Fish and Wildlife Service Refuge located within the Big Sandy River Embayment and in all of the waters of the West Sandy Creek Arm of the Big Sandy River Embayment.

All commercial fishing gear except slat baskets and trotlines is prohibited in all creeks from 4 a.m. to 9 p.m. during the months of April and May; all commercial fishing gear is permitted in all creeks from 9 p.m. to 4 a.m. daily during the months of April and May, except that whip sets (the driving of fish into trammel and gill nets by the use of noise and disturbing the water) are not permitted in any creeks which have operating commercial docks.

3. REELFOOT
 - (a) The taking of grass carp (*C. idella*) is prohibited.
4. WATTS BAR - trammel and gill nets are prohibited.

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5. OLD HICKORY

- (a) Trammel and gill nets are prohibited from Highway 231 upstream to Cordell Hull Dam and including the Caney Fork River.
- (b) Trammel and gill nets are prohibited from Highway 109 upstream to 231 except fishing of legal entanglement nets by whipset or trammeling method are permitted by contract with the Tennessee Wildlife Resources Agency.

6. FORT LOUDOUN - the possession of all species of catfish taken by commercial methods from Fort Loudoun Dam upstream to the confluence of the French Broad and Holston rivers is prohibited.

SECTION II. LICENSE

A commercial fishing license is required by anyone engaging in or assisting anyone engaging in commercial fishing. A commercial fisher with a valid Commercial Fishing License must be on board the vessel while commercial fishing for fish or turtles. A commercial fisher with a valid Commercial Fishing License and a valid Commercial Roe Fish Permit, Supplemental must be on board the vessel while any part of a sturgeon, paddlefish, or bowfin is harvested from the waters of the state. For the 2007-2008 license year and each license year thereafter, the number of Resident Commercial Roe Fish Permits available for purchase each year shall be limited to eighty (80). Any person who purchased a Resident Commercial Roe Fish Permit between March 1, 2006, and March 31, 2006, shall have priority to renew the permit in March, 2007, and in each succeeding March thereafter until he/she fails to renew such permit. A commercial fisher with a valid Commercial Fishing License and a valid Commercial Turtle Permit, Supplemental must be present to commercially harvest turtles from the waters of the State. A wholesale fish dealer must have a valid Wholesale Fish Dealer's License and a valid Wholesale Roe Fish Permit, Supplemental to buy, hold, or sell any part of a sturgeon, paddlefish, or bowfin.

SECTION III. GENERAL PROVISIONS

- A. Fish and turtles classified as endangered, threatened, or in need of management as proclaimed by the Wildlife Resources Commission may not be taken.
- B. The following fish species may be taken and sold commercially year-round unless otherwise restricted by this proclamation, other Tennessee Wildlife Resources Commission proclamations or rules, or Tennessee Code Annotated.

<u>Common Name</u>	<u>Scientific Name</u>
□ Shovelnose sturgeon	Scaphirhynchus platyrhynchus (Rafinesque)
◆ □ Paddlefish	Polyodon spathula (Walbaum)
Spotted gar	Lepisosteus oculatus (Winchell)
Longnose gar	Lepisosteus osseus (Linnaeus)
Shortnose gar	Lepisosteus platostomus Rafinesque
Bowfin	Amia calva Linnaeus
Skipjack herring	Alosa chrysochloris (Rafinesque)
Gizzard shad	Dorosoma cepedianum (Lesueur)
Threadfin shad	Dorosoma petenense (Guenther)
Grass carp	Ctenopharyngodon idella (Valenciennes)
Common carp	Cyprinus carpio Linnaeus
Silver carp	Hypophthalmichthys molitrix (Valenciennes)

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- | | |
|--|--|
| Bighead carp
River carpsucker
Quillback
White sucker
Smallmouth buffalo
Bigmouth buffalo
Black buffalo
Spotted sucker
Silver redhorse
Golden redhorse
Black bullhead
Yellow bullhead
Brown bullhead
♦ Blue catfish
Channel catfish
Flathead catfish
Freshwater drum
Yellow bass | Hypophthalmichthys nobilis (Richardson)
Carpiodes carpio (Rafinesque)
Carpiodes cyprinus (Lesueur)
Catostomus commersoni (Lacepede)
Ictiobus bubalus (Rafinesque)
Ictiobus cyprinellus (Valenciennes)
Ictiobus niger (Rafinesque)
Minytrema melanops (Rafinesque)
Moxostoma anisurum (Rafinesque)
Moxostoma erythrurum (Rafinesque)
Ameiurus melas (Rafinesque)
Ameiurus natalis (Lesueur)
Ameiurus nebulosus (Lesueur)
Ictalurus furcatus (Lesueur)
Ictalurus punctatus (Rafinesque)
Pylodictis olivaris (Rafinesque)
Aplodinotus grunniens Rafinesque
Morone mississippiensis Jordan, Eigenmann |
|--|--|
- ♦ The taking and possession of blue catfish and paddlefish from Cherokee Reservoir by commercial fishing methods is prohibited.
- Paddlefish or parts thereof shall not be taken during the periods in the table below, nor shall they be possessed during these periods unless they were previously taken during a legal taking season.

Waterbody	Closed Period
Mississippi River	April 16 to November 14
All other waters open to commercial paddlefish harvest	April 8 to November 14

Shovelnose sturgeon or parts thereof shall not be taken during the period from May 16 through October 14, nor shall they be possessed during this period unless they were previously taken during a legal taking season. Those persons possessing paddlefish or sturgeon or parts thereof during these closed periods must have in their possession receipts denoting pounds of flesh or eggs (or both if applicable) in their possession, name and address of supplier/fishermen, the name of the water body from which fish were harvested, and date of harvest or date obtained. From November 15, 2005 through November 14, 2007 paddlefish must be 36" or larger eye to fork length, from November 15, 2007 through November 14, 2008 paddlefish must be 37" or larger eye to fork length, and after November 15, 2008 paddlefish must be 38" or larger eye to fork length to be legal for harvest from all waters except the Mississippi River. Paddlefish must be 34 inches or larger eye to fork length to be legal for harvest from the Mississippi River. Shovelnose sturgeon must be larger than 24 inches and smaller than 32 inches from the tip of the snout to the fork of the tail to be legal for harvest. Paddlefish less than the appropriate minimum eye to fork length limit and shovelnose sturgeon smaller than 24 inches or greater than 32 inches must be returned immediately to the water. Paddlefish may not be possessed alive away from the harvested waters. Any paddlefish and/or shovelnose sturgeon from which eggs are taken must be kept. The cutting or mutilation of paddlefish to check for eggs is prohibited except that a stainless steel 12-gauge needle may be inserted into the abdomen between the pectoral and pelvic fins to determine the presence of eggs. This needle and syringe device must be on board every roe fishing vessel and kept in a sanitary

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manner. A 2-inch portion of ovary must remain in each harvested paddlefish while on the water or immediately adjacent to the water where harvested. Paddlefish eggs removed from ovaries must be kept in separate containers - eggs from one fish only per container. Shovelnose sturgeon must remain whole and the eggs must remain in each harvested shovelnose sturgeon while on the water or immediately adjacent to the water where harvested. Paddlefish may not be kept alive except for permitted aquaculture purposes.

- C. Only the Common Snapping Turtle, *Chelydra serpentina serpentina*, with a carapace (upper shell) length of at least 12 inches, measured front to back, may be taken year-round and statewide without limit by any legal commercial fishing method.
- D. Only at Reelfoot Wildlife Management Area, all sizes and species of turtles except the box turtles and those covered in Item A. above may be taken by any legal commercial fishing method.
- E. Commercial fishing gear is prohibited within 1,000 yards downstream of any TVA or Corps of Engineers Dam, within 300 yards of any commercial boat dock or resort, or within 100 yards of the mouth of any stream, river, or inlet at any time. For purposes of this proclamation, wingwalls and lock walls are considered to be a part of the "dam", and measurements will be made from their downstream end.
- F. No catfish less than 8 inches in length may be kept alive. The commercial harvest of catfish greater than 34 inches in length is prohibited statewide.
- G. Gill nets, trammel nets, turtle traps, and trotlines must be run at least once every 24 hour period. Other types of commercial fishing gear must be run at least once every 72 hour period.
- H. Hoop nets, fyke nets, trap nets, and pound nets with a mesh size of one (1) inch or smaller on the square may be fished only during the months of October, November, December, January, February, March, and April, except the Mississippi River, which is open year-round.
- I. A fish seine may be used in private waters and in waters which are replenished by overflows from the Mississippi, Tennessee, Obion, Hatchie, Wolf, Loosahatchie, and Forked Deer rivers, but which during the dry season of the year have no outlet to these rivers. Fish seines as defined in this proclamation may be used in the dewatering areas of Kentucky Reservoir.
- J. No commercial fishing gear shall be set so as to extend more than three-quarters (3/4) across any stream, river, chute, or embayment.
- K. Paddlefish larger than the appropriate minimum eye to fork length limit can be blocked (with the tail remaining on the fish) prior to sale if the fish also meets the appropriate minimum block length (as measured along side of the fish from the fork of the tail to the edge of the skin behind the gill arch) limit. The minimum block length limit for each minimum eye to fork length limit is reported in the table below. Blocked fish must be larger than both the minimum eye-to-fork length limit and the minimum block length limit. Prior to sale to an in-state wholesale fish dealer's business or prior to being marketed out-of-state, paddlefish carcasses may not be altered in such a manner that the eye to fork length or the block length of the fish can not be determined.

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If the minimum eye to fork length is:	Then the minimum block length is:
34 inches	25 inches
36 inches	27 inches
37 inches	27 inches
38 inches	28 inches
40 inches	29.5 inches

- L. Prior to sale to an in-state wholesale fish dealer's business or prior to being marketed out-of-state, shovelnose sturgeon carcasses may not be altered in such a manner that the length of the fish may not be determined.
- M. Commercially harvested paddlefish and sturgeon or parts thereof taken from the waters of the state and sold in-state must be marketed to a licensed wholesale fish dealer who has a valid Wholesale Roe Fish Permit, Supplemental.

SECTION IV. COMMERCIAL FISHING GEAR

Legal gear types are trotlines, slat baskets, hoop nets, fyke nets, pound nets, trap nets, trammel nets, seines, turtle traps, and cast nets.

1. Slat Basket

A slat basket is defined as a device used for taking of commercial fish only. Slat baskets may have only one outside funnel opening, and may be made of wood, plastic, or cane slats or splits which are placed lengthwise and so constructed that there must be a minimum of four openings in the catching area, each being at least 1½" wide and 6" long.

2. Hoop Net

A barrel shaped net made of synthetic cotton, linen, or nylon, and supported by hoops. A hoop net is also known as a barrel net, set net, funnel net, and trap net. One or more throats are attached inside the hoop structure. Legal mesh size of hoop nets is one (1) inch or smaller or three (3) inches or larger on the square. See Section III. for special restriction on 1" or smaller sizes.

3. Fyke Net, Trap Net and Pound Net

A fyke net, also known as a wing net, is a hoop net to which as many as three (3) wings or leads may be attached. Trap nets or pound nets which have rectangular or box shaped traps shall also be legal by this definition. The wings or leads are equipped with floats and sinkers, and the webbing of the wings shall be constructed of twine not smaller than Number 7 in nylon or Number 9 in cotton or linen. The maximum length of each wing is 50 feet. The legal mesh size of fyke nets and wings or leads is one (1) inch or smaller or three (3) inches or larger on the square. See Section III. for restriction on 1" or smaller sizes.

4. Trammel Net

A trammel net is defined as a net having three (3) webs (nets) hung to a single top (float) and bottom (lead) line. The two outside webs are called walling, and the inside web is called webbing. The inside webbing shall have a mesh size of not less than three (3) inches on the square. Effective April 24, 2003, webbing with square mesh greater than 4.0 and less than 6.0 inches is prohibited except on the Mississippi River where webbing with square mesh greater than 4.0 and less than 5.0 inches is prohibited. The outside walling shall have a mesh size of not less than six (6) inches on the square. The maximum mesh size of the outside walling shall consist of vertical ties or hobbles on each side

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of the webbing at six (6) foot intervals along the float and lead line. A net may not be hobbled to less than two thirds the height of the net. Maximum length of a trammel net is three hundred (300) yards. Trammel nets must be fished in a stationary manner except in the Mississippi River.

5. Gill Net

A gill net is defined as a single net attached to float and lead lines. Gill nets must have a minimum mesh size of 3 inches or greater. Gill nets with square mesh greater than 4.0 and less than 6.0 inches are prohibited except on the Mississippi River where square mesh greater than 4.0 and less than 5.0 inches are prohibited with a minimum mesh size of three (3) inches on the square. The maximum length of a gill net is three hundred (300) yards. Gill nets must be fished in a stationary manner except in the Mississippi River.

6. Fish Seine

A fish seine consists of a float and lead line to which netting is attached. The netting of the seine shall be constructed of twine not smaller than Number 7 nylon or synthetic fiber or Number 9 cotton or linen. The mesh size of seines shall be three (3) inches or larger on the square. Seines must be constantly attended, and may not be fished in a stationary manner.

7. Turtle Traps

A turtle trap is defined as a trap made of linen or cotton netting, wood or cane slats or strips, wire, or other similar materials with a minimum mesh size of three (3) inches on the square. Such traps must be constructed in a way as to permit the escape of fish through the three (3) inch openings. Turtle traps as defined herein may only be used in waters open to commercial fishing. Turtle traps must be set so that a portion of the catching area is positioned above the water.

8. Cast Net

A cast net is defined as a net having a maximum radius of ten (10) feet and a mesh size (square measure) of not less than one-fourth ($\frac{1}{4}$) inch and not greater than one (1) inch.

9. Trotline

A main line with drop lines to which single hooks are attached and baited in order to catch fish. Such drops must be at least 24 inches apart.

10. Dip Net

A dip net is a net constructed from natural or synthetic fibers which is attached to a frame that is attached to a pole. A dip net may only be used to commercially harvest turtles from Reelfoot Wildlife Management Area.

SECTION V. REPORT REQUIREMENTS

Commercial fishers and wholesale fish dealers are required submit monthly reports to the Tennessee Wildlife Resources Agency as instructed. Commercial fishers are required to provide TWRA with requested information and samples for all fish or turtles (or parts thereof) which they harvest from Tennessee waters or import into Tennessee. Requested information shall be reported on forms provided by TWRA and these forms must be completed within 24 hours of harvest. Commercial fishers must notify TWRA on the appropriate form if they did not harvest fish or turtles (or parts thereof) during a month. Wholesale fish dealers are required to provide TWRA with requested information and samples for all fish or turtles (or parts thereof) which they receive from commercial fishers, wholesale fish dealers, or nonresident equivalents. Wholesale fish dealers must indicate the quantity of fish or turtles (or parts thereof) that they receive from a commercial fisher on a receipt issued by the commercial fisher. Wholesale fish dealers must sign and date these receipts within 24 hours of receiving the product. Wholesale fish dealers must satisfy the commercial fishing reporting

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requirements as instructed by TWRA for nonresidents who supply them with fish or turtles (or parts thereof) harvested out-of-state. Wholesale fish dealers must notify TWRA on the appropriate form if they did not receive fish or turtles (or parts thereof) during a month. Commercial fishers and wholesale fish dealers must retain a copy of all receipts and forms for a period of two years, and make them available for inspection by TWRA. Commercial fishers and wholesale fish dealers must contact the Fisheries Management Division within 5 days upon purchasing a license and request the required forms.

Commercial fishers importing or exporting commercial fish or turtles (or parts thereof) into or out of Tennessee must have bills of lading denoting the quantity of product, name and address of supplier, name of water body from which product was harvested, and date of import/export. A copy of the bill of lading must be in the possession of the person importing or exporting the product. Commercial fishers must retain a copy of each bill of lading for a period of two years, and make it available for inspection by TWRA.

Section VI. REPEAL OF PRIOR PROCLAMATIONS

This proclamation repeals Proclamation 05-22, dated September 29, 2005.

Proclamation 06-22 received and recorded this 4th day of October, 2006 to become effective the 3rd day of November, 2006. (10-02-06)

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TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

PROCLAMATION 06-23 SPORT FISHING PROCLAMATION

Pursuant to the authority granted by Title 70, Tennessee Code Annotated, and Sections 70-4-107 and 70-4-119, thereof, the Tennessee Wildlife Resources Commission proclaims the following regulations effective March 1, 2007.

SECTION I. ENDANGERED SPECIES, GENERAL SEASONS, CREEL AND POSSESSION LIMITS, AND MINIMUM LENGTHS

A. ENDANGERED SPECIES

All fish identified as endangered or threatened or listed as in need of management as proclaimed by the Tennessee Wildlife Resources Commission may not be taken.

B. GAME FISH SPECIES

The season is open year-round on the following species, unless otherwise specified in this proclamation. The possession limit is twice the daily creel limit.

Only the daily creel limit may be possessed while afield. It shall also be unlawful to possess while afield any fish, which has been altered to the extent that its species and/or total body length cannot be determined. The length of a fish shall be determined with the fish laying on a flat ruler, the mouth closed, and the caudal (tail) fin lobes squeezed so as to produce the maximum length.

SPECIES	DAILY LIMIT	MINIMUM LENGTH
Rock bass.....	20.....	No length limit
Black bass (all species in combination)	5.....	No length limit
Except as listed below and in Section V, VI, and VII.		
All species from Reelfoot Lake, Reelfoot Watershed Lake #18, Gooch Unit E15"		
All species from Indian Boundary Lake.....	2.....	14"
Largemouth and smallmouth bass from Watauga Reservoir		12"
Largemouth bass and smallmouth bass from Cheatham, Old Hickory, and Melton Hill Reservoirs.....		14"
Largemouth and smallmouth bass from Boone, Barkley, Center Hill, Cherokee, Kentucky, Percy Priest, Pickwick, and Normandy Reservoirs.....		15"
Largemouth bass from Dale Hollow, Chickamauga, Nickajack, Watts Bar, and Tims Ford Reservoirs		15"
Largemouth bass from Fort Loudoun, Tellico, Parksville, and Norris Reservoirs		14"
Smallmouth bass from Fort Loudoun, Norris, Tellico, Tims Ford, and Watts Bar Reservoirs		18"
Smallmouth bass from Dale Hollow	2.....	16-21" Slot*

* One smallmouth bass under 16" and one
smallmouth bass over 21"

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SPECIES	DAILY LIMIT	MINIMUM LENGTH
Smallmouth bass from Chickamauga, Nickajack, and Guntersville Reservoir.....	1	18"
Smallmouth bass from Douglas Reservoir, Pigeon River (from the confluence with the French Broad River to North Carolina state line), and Little Pigeon River (including East and West Prongs) to GSMNP boundary	1	20"
Spotted bass from Norris, Cherokee, Fort Loudoun, Boone, Ft. Patrick Henry, South Holston, Melton Hill, Tellico, John Sevier, Davy Crockett, Watauga, Chilhowee, and Calderwood Reservoir	15	

NOTE: For this proclamation, a spotted bass is defined as any black bass that has patch of teeth on the center portion of the tongue.

- * See Special Definitions (Section XVI) for Reservoir boundary and specific area descriptions of Cherokee, Dale Hollow, Douglas, Norris, and Boone Reservoirs where size limits on smallmouth bass and largemouth bass apply.

SPECIES	DAILY LIMIT	MINIMUM LENGTH
Sauger except as listed below	10	15"
From Kentucky Lake		14"
Walleye except as listed below	5	16"
Walleye from South Holston and Watauga Lakes.....		18"
Walleye from Tellico Reservoir.....		15"*
*only one walleye can be 24" or longer		
Walleye or sauger or in combination From Cherokee, Chilhowee, Douglas, Fort Loudoun, Melton Hill, and Tellico Reservoirs and their tributaries.....	10	15"
Walleye or sauger or in combination From Norris Reservoir and its tributaries (upstream to Grissom Island on the Clinch River)	5	15"
Walleye, sauger or saugeye or in combination From Normandy Reservoir and its tributaries.....	15	15"

NOTE: For this proclamation, any walleye-sauger hybrid (saugeye) is considered the same as a sauger.

Striped bass or Cherokee bass (striped bass x white bass hybrid), or in combination. Except as listed below:	2	15"
On Norris Reservoir during April through October statewide regulations apply. Effective through February 2008, during November through March the creel and size limits are.....	1	36"
On Cordell Hull and Melton Hill Reservoirs		32-42" slot*
* only 1 striped bass per day can be over 42"		

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SPECIES	DAILY LIMIT	MINIMUM LENGTH
On Cherokee Reservoir-see SECTION II. WATERS WITH CLOSED SEASONS		
Muskellunge except as listed below	1	36"
Muskellunge from Melton Hill Reservoir		44"
Crappie (white and black combined) except as listed below	15	10"
From private waters and State Park Lakes	5	No length limit
From Norris Reservoir	10	10"
From Pickwick and Guntersville reservoirs	30	9"
From the Mississippi (river proper, sloughs and oxbows), Hatchie, Loosahatchie, Forked Deer, Wolf, and Obion rivers and their tributaries; Reelfoot Lake, Indian Boundary Reservoir, and Davy Crockett Reservoir,	30	No length limit
From Barkley, Cheatham, J. Percy Priest, Kentucky, and Old Hickory reservoirs	30	10"
White bass	15	No length limit
Northern pike		No limits
Yellow bass		No limits
Bluegill and other bream (except as listed below)		No limits
From Norris Lake	30	No length limit
Pickerel		No limits
Yellow perch		No limits
Trout (combined daily creel limit-all trout) except as listed below	7	
Brook trout	7	6"
Lake trout	2	
Redear Sunfish except as listed below	20	No length limit
From Kentucky Reservoir	30	No length limit

C. NONGAME FISH SPECIES

SPECIES	DAILY LIMIT	MINIMUM LENGTH	MAXIMUM LENGTH
Non-game species except as listed below and in Section V, VI and VIII			No limits
Catfish (blue, channel, and flathead) 34"			
*only 1 catfish per day greater than			34"
Catfish (blue and channel) when taken from Allen Branch Pond, and Indian Boundary Lake	5		
Beech River Watershed Lakes	5	15"	
Paddlefish may be harvested from April 24 to May 31, no culling	2		No length limit
Paddlefish exception: Cherokee Reservoir, March 1 through March 15 only	1	30"	

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SECTION II. WATERS WITH CLOSED SEASONS

A. Land Between the Lakes Wildlife Management Area:

All waters open year-round, except the following:

- (a) Farm ponds – Open to fishing except those ponds posted as closed.
- (b) Bards Lake – Trotlines and limb lines prohibited. Jugs permitted from October 1 through March 21 with a limit of 10 per person.

B. Catoosa Wildlife Management Area

All streams and ponds are open from April 1 through December 31, except on dates of managed big game and turkey hunts.

C. Woods Reservoir: See Proclamation 74-17 for areas closed to fishing

D. Buffalo Creek (Grainger County): Closed to all fishing and minnow seining from the mill dam upstream.

E. Doakes Pond (Norris Reservoir) – That portion of Norris Reservoir known as Doakes Pond (a subimpoundment), located adjacent to Highway 63 approximately 9 miles NE of LaFollette, is closed to fishing.

F. South Holston Reservoir: Closed to trout fishing December 1 through the last day of February.

G. Center Hill Lake and Tributaries – Closed to taking or possessing of paddlefish.

H. Clear Creek (tributary to the Clinch River, Anderson County) – closed to all fishing including minnow seining from Highway 441 upstream to the second dam (adjacent to the City of Norris Water Tower), as posted, from November 1 through March 31.

I. All TWRA and USFWS hatchery ponds and raceways are closed to fishing year-round.

J. South Holston Tailwater – Closed to all fishing from November 1 through January 31 in the following areas:

- (1) Hickory Tree Bridge upstream to the confluence with Bottom Creek.
- (2) Downstream point of Boy's Island (the first island downstream of Weaver Pike Bridge) upstream to the top of the first island above Webb Road Bridge.

K. On Cherokee Reservoir, a closed fishing zone will be in effect from July 15 through September 15. This zone is enclosed by lines from the boat ramp at the south end of the dam across the lake to Point 2, from Point 2 to Point 3, and from Point 3 back across the lake to the TWRA boat ramp at the north end of the dam. All bank fishing will be open and the coves along the south-east shoreline will be open to boat fishing, but no fishing for any species will be allowed in the described zone from July 15 through September 15.

L. Douglas Reservoir – Henderson Island WMA rearing pond closed to fishing year-round.

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SECTION III. CHEROKEE WILDLIFE MANAGEMENT AREA – SPECIAL REGULATIONS

A. Tellico Area – Daily Permit Required

- Tellico River from its confluence with Turkey Creek upstream to the Tennessee-North Carolina state line during the period March 15 through September 15.
 - Citico Creek upstream from its confluence with Little Citico Creek during the period March 15 through September 15.
 - Green Cove Pond (See Section III-F)
1. Fishing permitted year-round. Closed on Thursday and Friday during the period March 15 through September 15 (except when national or state holidays fall on Thursday and Friday). From September 16 through March 14 fishing is allowed every day and no permit is required.
 2. Daily limit – 7 trout; possession limit – 14 trout.
 3. Fishing permitted from ½ hour before official sunrise to ½ hour after official sunset. The possession of fishing equipment and/or tackle is prohibited on stream banks except during legal fishing hours.
 4. Each fisherman permitted only one rod or pole.

B. Wild Trout Streams

Group I

- North River and tributaries
 - Bald River and tributaries
 - North Fork of Citico Creek and tributaries
 - South Fork of Citico Creek and tributaries
 - Laurel Fork and tributaries on Cherokee WMA beginning at the cable crossing ½ mile upstream from the USFS Dennis Cove Recreation Area and extending upstream
 - Gee Creek and tributaries in Polk County
 - Wolf Creek and tributaries in Polk County
 - Beaverdam Creek and tributaries from its confluence with Birch Branch downstream to Tank Hollow Road (USFS Rd. 300)
 - Paint Creek and tributaries in Greene County-from USFS campground upstream to U.S. Forest Service Boundary line south of Highway 70 near Munday Gap.
1. Fishing permitted year-round.
 2. Daily limit – 3 trout; possession limit – 6 trout.
 3. Size limit – Rainbow and brown trout – 9 inches minimum length
brook trout – 6 inches minimum length
 4. Only single-hook artificial lures are permitted. Use or possession of bait or multiple hook lures is prohibited. One single-hook artificial lure separated from a legal lure by a length of line (for example: a dropper fly) is also permitted.
 5. Fishing permitted from ½ hour before official sunrise to ½ hour after official sunset.

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6. Each fisherman permitted only one rod or pole.

Group II

- Rocky Fork Creek and tributaries on lands owned by SF Rocky Fork Holdings, Inc.
- Higgins Creek and tributaries
- Squibb Creek and tributaries
- Sarvis Cove and tributaries
- Dry Creek and tributaries (Greene County) upstream from the U.S. Forest Service boundary
- Sycamore Creek and tributaries
- Rough Ridge Creek and tributaries
- Little Jacob Creek (Sullivan County)
- Left Prong Hampton Creek (Carter County)

1. Fishing permitted year-round.
2. Daily limit – 7 trout; no more than 3 may be brook trout
Possession limit – 14 trout; no more than 6 may be brook trout
3. Size limit – Rainbow and brown trout – no minimum length limit
Brook trout – 6 inch minimum length limit
4. Only single-hook artificial lures are permitted. Use or possession of bait or multiple hook lures is prohibited. One single-hook artificial lure separated from a legal lure by a length of line (for example: a dropper fly) is also permitted.
5. Fishing permitted from ½ hour before official sunrise to ½ hour after official sunset.
6. Each fisherman permitted only one rod or pole.

C. Calderwood Reservoir

1. Appropriate licenses from Tennessee or North Carolina are legal on the entire reservoir while fishing from a boat.
2. Fishing permitted year-round.
3. Size limit – none.
4. Daily limit – 7 trout; possession limit – 14 trout
5. Trotlines and limblines prohibited.

D. Slickrock Creek

- That portion of Slickrock Creek which constitutes the boundary between the states of Tennessee and North Carolina.
1. Appropriate licenses from Tennessee or North Carolina are valid on this portion of Slickrock Creek.
 2. Fishing permitted year-round.

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3. Daily limit – 4 trout; possession limit – 8 trout.
 4. Size limit – Rainbow, brown, and brook trout – 7 inches minimum.
 5. Fishing permitted ½ hour before official sunrise and ½ hour after official sunset.
 6. Only single-hook artificial lures are permitted. Use or possession of bait or multiple hook lures is prohibited. One single-hook artificial lure separated from a legal lure by a length of line (for example: a dropper fly) is also permitted.
 7. Each fisherman permitted only one rod or pole.
- E. All other streams in the Cherokee Wildlife Management Area not listed above.
1. Fishing permitted daily.
 2. Daily limit – 7 trout; possession limit – 14 trout
 3. Each fisherman permitted only one rod or pole.
- F. Green Cove Pond
- Fishing permitted year-round. Closed on Thursday and Friday (except when national or state holidays fall on Thursday or Friday) year-round.
1. Fishing limited to handicapped individuals (see Section XVI), children under age 13 and adults 65 years of age and older.
 2. Tellico-Citico daily permit required year-round.
 3. Season is open year-round.
 4. Days closed – Thursday and Friday (except open on all state and national holidays and scheduled special organized handicapped or children fishing events).
 5. Creel limit – 7 trout per day.
 6. Size limit – no restrictions.
 7. Hours open – ½ hour before sunrise to ½ hour after sunset.
 8. Bait restrictions – no minnows.

SECTION IV. **TROUT FISHING – SPECIAL REGULATIONS**

A. Quality Trout Fishing Areas:

The areas listed below are designated as quality trout fishing areas and have regulations as described in a., b., c., and d. below.

1. Hiwassee River: That portion of the Hiwassee River from the L&N Railroad Bridge upstream to the U.S. Forest Service's "Big Bend Parking Area".

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2. Watauga River: That portion of the Watauga River from Smalling Bridge downstream to the CSX Railroad bridge.
 - a. Daily limit – 2 trout; Possession limit – 2 trout.
 - b. Size limit – 14 inch minimum length.
 - c. Use or possession of any bait other than artificial lures is prohibited.
 - d. Trout less than 14 inches in length may not be possessed within quality trout fishing areas.

B. City of Gatlinburg:

1. Waters Open:

The taking of trout is permitted within the streams designated below and under the limits and during the times contained herein:

- a. General Streams
 - West Prong Little Pigeon River from Park Boundary to Gnatty Branch except those sections set aside as Children's Streams.
 - Dudley Creek from Park Boundary to West Prong Little Pigeon River, except those sections set aside as Children's Streams.
 - Roaring Fork upstream to the Park Boundary.
 - Leconte Creek from Painter Branch to West Prong Little Pigeon River.
- b. Children's Streams (may only be fished by children 12 and under, unless otherwise posted)
 - Leconte Creek from Painters Branch upstream to Park Boundary.
 - West Prong Little Pigeon River from 100 yards above entrance of Herbert Holt Park downstream to Gatlinburg By-pass Bridge.
 - Dudley Creek from Highway 441 Bridge to West Prong Little Pigeon River.

2. Season and Creel Limits:

- a. Fishing permitted year-round, except on Thursday, from ½ hour before official sunrise to ½ hour after official sunset.
 - 1) From December 1 through March 31:
 - (a) Possession of any trout shall be prohibited
 - (b) All trout caught must be immediately returned to the water
 - (c) Use or possession of bait is prohibited. Use or possession of any artificial lures other than single hook artificial flies, spinners, and spoons is prohibited. The use of one dropper fly having a single hook which is separated from a legal lure by a length of line is permissible.
 - 2) From April 1 through November 30:
 - (a) Daily creel limit shall be five (5) trout.
 - (b) Total possession limit shall not exceed twice the daily creel limit
 - (c) While fishing or when afield, possession of more than the daily creel limit shall be prohibited, regardless of whether the trout are fresh, stored in an ice chest, in a vehicle, or otherwise preserved.

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- b. Creel Limits
 - General Streams – the creel limit is five (5) trout per day.
 - Children's Streams - the creel limit is two (2) per day
- c. Methods: Fishing is permitted with one hand-held rod and single hook only.
- d. Daily Fees

- 1) In addition to the State licensing requirement, all Tennessee Residents ages 13 through 64 must possess a special Gatlinburg daily permit. The permit fee is \$2.00; provided that a non-resident may purchase a 1-day all inclusive permit, in lieu of the normal license/permit combination for a total fee of \$10.00. Non-residents under the age of 13 are exempt from the Gatlinburg daily permit.

C. Dale Hollow Reservoir

- 1. April 1- October 31 – Daily creel limit – 7 trout
No more than 2 may be lake trout – no size limit
- 2. November 1 – March 31 – Daily creel limit – 2 trout
Minimum size limit – 22 inches

D. Horse Creek (Greene County)

That portion from the U.S. Forest Service boundary line upstream to the junction of Squibb Creek.
Creel limit: 7 per day except from May 1 – September 30, when the limit is 2 per day.

E. South Fork of the Holston River

From the South Holston Dam to Highway 37 Bridge at Bluff City
-- 16-22 inch slot (protected length range) – 7 trout, only 1 of which can be over 22 inches.

F. Delayed Harvest Areas: In the areas listed below, the harvest or possession of trout will be prohibited during the catch-and-release season. During the catch-and-release season, only artificial lures are permitted and the use or possession of bait is prohibited.

- 1. Paint Creek – Paint Creek Campground downstream to mouth at French Broad River.
Catch-and-release season – October 1 through the last day of February.
- 2. Tellico River – Mouth of Turkey Creek upstream to mouth of North River. Catch-and-release season will be from October 1 through March 14.

G. Big Creek, Goforth Creek, and Spring Creek and their tributaries in Polk County.

- Closed to fishing on Fridays from March 1 to July 1 (except state and national holidays)
- Only a single hook lure or a baited single hook is allowed. Use or possession of multiple hook lures or bait is prohibited.
- Fishing permitted ½ hour before official sunrise to ½ hour after official sunset.
- The possession of fishing equipment or tackle is prohibited on stream banks except during legal fishing hours.

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- H. Hiwassee River from Appalachia Powerhouse to U.S. Forest Service's "Big Bend Parking Area". 14 inch minimum length limit for brown trout, 2 fish daily limit. Does not affect current quality trout fishing area regulations.
- I. Caney Fork River and its tributaries from Center Hill Dam to Cumberland River – 18 inch minimum length limit for brown trout, 2 fish daily limit.

SECTION V. WILDLIFE AGENCY LAKES AND WILDLIFE MANAGEMENT AREAS

- A. Lakes in the Wildlife Agency Lakes Management System are: Coy Gaither, Bedford, Browns Creek, Carroll, Davy Crockett, Garrett, Gibson County, Graham, Herb Parsons, Laurel Hill, Maples Creek, Marrowbone, VFW, Whiteville, Williamsport, Glenn Springs, and Reelfoot-Indian Creek Watershed Lakes.
- B. Seasons, Creel Limits, Size Limits and Hours of Operation
 - 1. Unless noted in Section II, Wildlife Agency Lakes are open year-round. Lakes will be open ½ hour before official sunrise to ½ hour after official sunset. Only authorized personnel may be on Agency Lake property during closed hours, except that Garrett lake is open 24 hours.
 - 2. Creel and Size Limits:

Statewide limits apply except as listed below:

	DAILY LIMIT	MINIMUM LENGTH
Catfish (blue and channel combined)	5	
From Bedford, Laurel Hill, VFW, and Williamsport lakes	5	14"
Black bass (all species)		
from Williamsport Lakes	1	20"
from Glenn Springs, Marrowbone, Bedford, and Gibson County	5	14-18" slot*
*only 1 bass per day greater than 18" ..		
from Lake Graham, Herb Parsons, Laurel Hill	10	14-18" slot
*only 1 bass per day greater than 18" ..		
from Davy Crockett Lake	10	
from Browns Creek Lake	5	16-21" slot*
*only 1 bass per day greater than 21"		
Bluegill and redear sunfish (combined):		
From Laurel Hill, Bedford, Gibson County, Glenn Springs, VFW, and Williamsport lakes	20	
Crappie (white and black combined) except as listed below	30	10"
From Coy Gaither, Bedford, Laurel Hill, Marrowbone, VFW, and Williamsport Lakes	15	10"

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- C. Williamsport Lakes:
Whippoorwill Lake is “youth fishing” only. Only youths 16 and under and an accompanying adult may fish.
- D. Laurel Hill Lake: The embayment above the road that lies between the concession building and the campground is a “youth fishing” only fishing area. Youths 16 and under may fish.
- E. Methods for Wildlife Agency Lakes:
1. Except for jug fishing as listed below, only rods and reels, poles, and hand-held lines may be used.
 2. Jug fishing will be permitted daily from April 1 through September 30 except Saturday, Sunday, Memorial Day, Independence Day, and Labor Day, and daily from October 1 through March 31. Jugs are limited to ten (10) per boat. Jugs must be marked with the owner's name and address.
- F. Bridgestone/Firestone Centennial Wilderness WMA Ponds are designated as “youth fishing” ponds. Fishing is permitted for youths 16 years of age or younger who are accompanied by a non-fishing adult (18 years of age or older). Youths are limited to using one (1) pole or rod while fishing. Fishing is permitted during daylight hours only.
- Daily creel limits:
- | | |
|-----------------|------------------------------|
| Bluegill | – 10 |
| Channel catfish | – 5 |
| Largemouth bass | – 0 (catch and release only) |
- G. Egret and Heron Ponds at Williamsport, and the nursery ponds at Laurel Hill Lake are closed to fishing.

SECTION VI. DEPARTMENT OF ENVIRONMENT AND CONSERVATION MANAGED LAKES

Statewide fishing regulations apply on lakes managed by the Tennessee Department of Environment and Conservation except as listed below:

Black bass from the following lakes must be a minimum of 15”:

- Falling Water (Burgess Falls) Lake, Burgess Falls Natural Area
- Lake Lajoie, Chickasaw State Park
- Lake Placid, Chickasaw State Park
- Byrd Lake, Cumberland Mountain State Park
- Lake Lindsey, David Crockett State Park
- Fall Creek Lake, Fall Creek Falls State Park
- Sullivan's Pond, Ft. Pillow State Historic Area
- Indian Mt. “B” Lake, Indian Mountain State Park
- Acorn Lake, Montgomery Bell State Park
- Creech Hollow Lake, Montgomery Bell State Park
- Kelly (Standing Stone) Lake, Standing Stone State Park

Black bass from:

- Big Ridge Lake, Big Ridge State Park, must be a minimum of 14”
- Poplar Tree Lake, Meeman-Shelby Forest State Park, 14”-18” PLR (slot limit)
- Travis McNatt Lake, Big Hill Pond State Park, daily creel limit of 10 bass (no size limit)

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Black bass fishing on the following lakes is restricted to catch-and-release only; i.e., all black bass caught must be immediately released unharmed:

- Lake Woodhaven, Montgomery Bell State Park

Channel or blue catfish or in combination:

- Daily creel limit of 5

Crappie (white and black combined):

- No minimum size limit

Bluegill and redear sunfish in combination:

- Poplar Tree Lake, Meeman-Shelby Forest State Park – Daily creel limit of 20 fish

SECTION VII. SPECIAL REGULATIONS ON LAKES CONTROLLED BY NON-STATE GOVERNMENTAL AGENCIES

- A. Casper Lake (Shelby County) – the minimum size limit on black bass is 16” and the daily creel limit is 2.
- B. New Lake (Lewisburg) – Black bass: Creel limit – 5; minimum length – 13”. No minimum length limit on crappie. Open ½ hour before official sunrise to ½ hour after official sunset. Only rods and reels and cane poles are permitted.
- C. Campbell Lake (Maury County) – Anglers must follow regulations as posted at the lake.
- D. Lewisburg and Dickson city lakes – Catfish: Creel limit – 5
- E. Kefauver Park (Madisonville) lake – Catfish: Creel limit – 5
Black bass: Creel limit – 2; Minimum length – 14”

SECTION VIII. MINNOWS

- A. The catching of minnows for the purpose of sale is prohibited in Cannon, Lincoln, Macon, Moore, Smith, Sumner, and Trousdale counties. The possession limit for minnows taken from streams in the above counties is 150 in Cannon, Macon, Smith, Sumner, and Trousdale; 250 in Lincoln and Moore. It shall be unlawful to sell, take for sale, or offer for sale hornyhead minnows (stonerollers) in Carter, Unicoi, Washington, Johnson, Sullivan, and Morgan Counties.
- B. Minnow traps and seines as defined below may be used to catch minnows subject to all laws and regulations governing the catching of minnows.
 - 1. A minnow trap is hereby defined as a device used for the purpose of catching minnows. The mouth opening or openings shall not exceed one and one-half (1 ½”) inches in diameter.
 - 2. A minnow seine is hereby defined as a net having a mesh size no greater than three-eighths (3/8) of an inch on the square, and no greater than ten (10) feet in length.

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SECTION IX. TURTLES

A. Species, Creel and Size Limits, and Seasons

1. Only the Common Snapping Turtle – *Chelydra serpentina serpentina* – may be legally taken.
2. All turtles listed as endangered or threatened or listed as “In Need of Management” as proclaimed by the Tennessee Wildlife Resources Commission may not be taken, and include:
 - Bog Turtle – *Clemmys muhlenbergi*
 - Alligator Snapping Turtle – *Macrochelys temminckii*
 - Cumberland Slider – *Trachemys (Pseudemys) scripta troosti*
3. The season is open year-round.
4. The daily limit is 5. The possession limit is twice the daily creel limit. Only the daily creel limit may be possessed while afield.
5. The minimum legal length for the common snapping turtle is 12 inches. For purposes of this proclamation, the length of a turtle is determined by measuring the carapace (upper shell) from front to back.
6. Turtles may be taken by all legal sport fishing methods except archery and spear guns.

Additionally, sport fishermen may take turtles by the use of up to three hoop nets having a minimum mesh size of three-inches (3”) on the square in Benton, Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Houston, Humphreys, Lake, Lauderdale, McNairy, Madison, Obion, Perry, Shelby, Stewart, Tipton, and Weakley counties. Each net must be marked with the name and address of the owner. Each net must be set so that a portion of the catch area is above the water.

7. It shall be unlawful to possess while afield any turtle which has been altered to the extent that its species and/or length cannot be determined.

SECTION X. GIGGING, GRABBLING, GRAB HOOKING, SNAGGING, TUBBING, ARCHERY, SPEAR-GUN FISHING, DIPPING, AND CAST NETTING.

A. Season open year-round except as noted below.

B. All waters open except:

1. Within 100 yards below dams except at Pickwick the closed area will extend downstream to the first moorage cell located across from the boat launching ramp. At John Sevier Steam Plant the discharge channel is also closed. Dipping and cast netting are excluded from this restriction.
2. Those areas closed to fishing listed in Section II.
3. All waters closed by separate proclamation.

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4. Norris Reservoir between River mile 32 (Point 15) and the highway 25E Bridge on the Powell River Arm and between River Mile 137 (Point 31) and the Highway 25E Bridge on the Clinch River Arm from January 1 through April 30. Cast netting is excluded from this restriction.
 5. Watauga Reservoir Tributaries – Closed from January 1 to April 30. The Elk River in Carter County from the Highway 321 Bridge downstream to RM3.0 (Point 11) on the Elk River Arm of Watauga Reservoir, Doe Creek (Old Cabin Private Road downstream to Roan Creek), Roan Creek (Mountain Lake Estates Bridge downstream to Doe Creek), and Watauga River (NC line downstream to end of Cownstown Road). Cast netting is excluded from this restriction.
 6. Snagging prohibited year-round on the South Holston tailwater (from South Holston Dam to the headwaters of Boone Reservoir), Center Hill Reservoir, and the Cumberland Fossil Plant discharge channel into Barkley Reservoir.
 7. All streams in the following counties closed year-round to gigging, but are open to all other methods identified in Section X.
 - Bedford-- Lawrence-- Maury
 - Giles-- Lewis-- Wayne
 - Hickman-- Marshall
 8. East Fork Obey River and tributaries closed January 1 through April 30.
- C. Species which may be taken:
1. Non-game species – See Section I.C.
- D. Methods Defined:
1. Gigging: The taking of fish by means of hand-held pole or spear with a tip consisting of a single sharpened point or one or more sharpened barbed points; including, but not limited to gear known as the Hawaiian Sling.
 2. Grabbling: The taking of fishes with the hands.
 3. Grab Hooking: The taking of fishes using one more single, double, or treble hooks fastened directly to a pole or rod in such a manner that they are not separated from pole or rod by a length of line.
 4. Snagging: The taking of fishes using one or more single, double, or treble hooks which are manipulated or jerked through the water in such a manner as to impale or hook fishes.
 5. Tubbing: The taking of fishes using a tub or like device which has neither top or bottom.
 6. Archery: The taking of fishes using long, recurve, and compound bows using arrows with barbed points; crossbows are permitted.
 7. Spear-gun Fishing: The taking of fishes using a spear-gun. A spear gun is any device designed to propel a spear through water and is drawn or held by mechanical device.
 8. Dipping: Taking of fishes using a dip net.

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9. Cast Netting: The taking of fishes by throwing and retrieving a cast net having a maximum radius of 10 feet and with a mesh size (square measure) of not less than one-fourth (1/4") and not greater than one (1) inch.

SECTION XI. SLAT BASKETS

- A. A slat basket is defined as a device used for taking non-game fish only. Slat baskets may have only one outside funnel opening, and may be made of wood, plastic, or cane slats which are placed lengthwise and so constructed that there must be a minimum of four (4) openings in the catching area, each being at least 1 ½" wide and 6" long.
- B. Slat baskets as defined above and properly tagged shall be legal in all public waters except TWRA Managed Lakes.
- C. Season open year-round.
- D. Only non-game fish may be taken. See Section I.C.
- E. Only one basket tag will be issued to an individual.
- F. Possession or use of more than one slat basket is prohibited.

SECTION XII. TROT LINES, LIMBLINES AND JUGS

- A. Season open year-round except as noted in Section II and Section V.
- B. All waters open except as follows:
 1. Sport fishing trotlines, limblines, and jugs prohibited within 1,000 yards below any TVA or Corps of Engineers dam.
 2. Allen Branch Pond, Indian Boundary Lake, and Chilhowee (McKamy Pond) in Cherokee Wildlife Management Area closed to jug fishing and trotlines. Indian Boundary Lake is also closed to limblines.
 3. Trotlines prohibited in the Beech River Watershed Development Authority lakes, in the New Johnsonville Steamplant Harbor, and within 50 yards of the Danville Railroad Bridge dikes.
 4. Bards Lake on Land Between the Lakes closed to trotlines and limblines.
 5. Trotlines, limblines, and jugs prohibited on Norris Reservoir between River Mile 32 (Point 15) and the Highway 25E Bridge on the Powell River Arm between River Mile 137 (Point 31) and the Highway 25E Bridge on the Clinch River Arm from January 1 through April 30.
- C. Methods Defined:
 1. Trotline: A main line with drop lines to which single hooks are attached and baited in order to catch fish. Such drops must not be closer than 24 inches.

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2. Limblining: The use of no more than one hook on a single line suspended from a tree or shrub limb, or from a pole imbedded in or braced on the bank, with a maximum of 25 limblines per licensed angler.
 3. Jug Fishing: The use of a hook connected by a length of line to a floating buoy (jug).
- D. All species may be taken.
- E. Creel limit on game fish same as statewide; non-game species – no limit (except that no paddlefish may be harvested).
- F. Other Restrictions:
1. Sport fishing trotlines, limblines, and jugs must be tagged and/or marked with the owner's name and address. On trotlines, the tag must be placed on the line within 5 feet of the bank, if the trotline is attached to a bank. On floating trotlines the information shall be marked on the floats. In all situations, the tag must be placed within 5 feet of either end. On limblines, the tag must be affixed to the line above the water level.
 2. Sport fishing trotlines, limblines, and jugs must be run at least once each day.
 3. Sport fishermen limited to 50 jugs or blocks each except New Johnsonville Steam Plant Harbor and Bards Lake, where the limit is ten (10) jugs or blocks per sport fisherman and on Beech River Watershed Development Authority Lakes where the limit is twenty (20) jugs or blocks per boat. On Bards Lake, jugs are permitted only from October 1 through March 21.
 4. Sport fishing trotlines, limblines, and jugs not fished according to these regulations are subject to be removed by Agency personnel.

SECTION XIII. SHAD TRAWLING

- A. Season: Year-round.
- B. Waters Open – All waters except within 1,000 yards below any dam.
- C. Method Defined: The taking of threadfin or gizzard shad using a trawl having a mesh size no larger than 1 inch, a hoop diameter no larger than 48 inches, and a net length no longer than 72 inches.
- D. Shad collected cannot be sold.

SECTION XIV. SPECIAL RESTRICTIONS

- A. Reelfoot Lake. During April and May, the use of gasoline engines to propel boats in selected areas of Reelfoot Lake as posted by TWRA signs is prohibited.
- B. Center Hill Reservoir

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1. On the upper end of Center Hill Reservoir including Caney Fork River beginning at Rock Island State Park boat launching ramp and extending upstream to Great Falls Dam, anglers are restricted to the use of one hook having a single point or one lure having no more than one hook with a single point (artificial or bait) during the period from January 1 through April 30. No more than 3 rods and reels or poles may be used.
- C. Dale Hollow Reservoir
1. Compton Boat Ramp upstream to Hwy 52 bridge on the East Fork Obey River Arm, anglers are restricted to the use of one hook having a single point or one lure having no more than one hook with a single point (artificial or bait) during the period from January 1 through April 30.
 2. No more than 3 rods and reels or poles per boat angler and 6 rods and reels or poles per bank angler may be used.
- D. Watauga Reservoir Tributaries
1. Anglers are restricted to the use of one hook having a single point or one lure having no more than one hook with a single point (artificial or bait) during the period from January 1 through April 30. The Elk River in Carter County from the Highway 321 Bridge downstream to RM 3.0 (Pt. 11) on the Elk River Arm of Watauga Reservoir, Doe Creek (Old Cabin Private Road downstream to Roan Creek), Roan Creek (Mountain Lake Estates Bridge downstream to Doe Creek), and Watauga River (NC line downstream to the end of Cownstown Road).
- E. Umbrella Rig Restriction – Umbrella rigs are defined as an array of more than 3 artificial lures or baits (with or without hooks) used by a single rod and reel combination. If the hook size is 6 or larger, then only one lure or bait may have a hook and that hook must be a single hook.

SECTION XV. SPECIAL DEFINITIONS

A. Game Fish:

The following fish are designated as game fish:

Family – Centrarchidae

All fish in the family Centrarchidae, including those listed below and all hybrids, are designated as game fish.

Largemouth bass
Smallmouth bass
Spotted bass
Redeye bass

Micropterus salmoides (Lacepede)
Micropterus dolomieu (Lacepede)
Micropterus punctulatus (Rafinesque)
Micropterus coosae (Hubbs and Bailey)

White crappie
Black crappie

Pomoxis annularis
Pomoxis nigromaculatus (Lesueur)

Rock bass
Warmouth
Bluegill
Redear sunfish
Longear sunfish

Ambloplites rupestris (Rafinesque)
Lepomis gulosus (Cuvier)
Lepomis macrochirus (Rafinesque)
Lepomis microlophus (Gunther)
Lepomis megalotis (Rafinesque)

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Green sunfish
Flier
Redbreast sunfish
Pumpkinseed
Orangespotted sunfish

Lepomis cyanellus (Raginesque)
Centrarchus macropterus (Lacepede)
Lepomis auritus (Linnaeus)
Lepomis gibbosus (Linnaeus)
Lepommis humilis (Girard)

Family – Percichthyidae

Striped bass
Cherokee bass (Striped
bass- White bass hybrid)
Yellow bass

Morone saxatilis (Walbaum)

Morone chrysops (Rafinesque)
Morone mississippiensis (Jordan and
Eigenmann)

Family – Percidae

Walleye
Sauger
Walleye-Sauger
hybrid (Saugeye)
Yellow perch

Stizostedion vitreum (Mitchill)
Stizostedion canadense (Smith)

Stizostedion sp.
Perca flavescens (Mitchill)

Family – Esocidae

All fish in the family Esocidae, including those listed below and all hybrids, are designated as game fish.

Muskellunge
Northern Pike
Chain pickerel
Grass pickerel

Esox masquinongy (Mitchill)
Esox lucius (Linnaeus)
Esox niger (Lesueur)
Esox americanus (Lesueur)

Family – Salmonidae

All fish in the family Salmonidae, including those listed below and all hybrids, are designated as game fish.

Rainbow trout
Brown trout
Brook trout
Lake trout
Ohrid trout

Oncorhynchus mykiss
Salmo trutta (Linnaeus)
Salvelinus fontinalis (Mitchill)
Salvelinus namaycush (Walbaum)
Salmo letnica

B. Non-Game Species:

All species except those listed as game fish and those proclaimed by the TWRC to be endangered, threatened, or in need of management.

C. Hooks Defined:

Hooks are defined as follows:

Single hook – 1 point
Double hook – 2 points
Treble hook – 3 points

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- D. The use of rods and reels, poles, hand-held lines, and other devices and methods described in this proclamation are the only legal means of sport fishing.
- E. Reservoir full pool level is the reservoir/stream boundary for harvest restrictions, unless otherwise noted.
- F. Norris Reservoir:

For purpose of size restrictions on largemouth and smallmouth bass, extends upstream to the Highway 25E bridge on the Clinch River Arm and upstream to Gap Creek on the Powell River Arm.
- G. Boone Reservoir:

For purpose of size restrictions on largemouth and smallmouth bass, extends upstream to the 11E Bridge at Bluff City on the South Fork Holston River Arm and upstream to the new Austin Springs Bridge on the Watauga River.
- H. Cherokee Reservoir:

For purpose of size restrictions on largemouth and smallmouth bass, shall extend upstream to the John Sevier Dam.
- I. Douglas Reservoir:

For purpose of size and creel restrictions on smallmouth bass and crappie, extends upstream to the ENCA dam on the Nolichucky River and to the mouth of the Pigeon River on the French Broad River.
- J. Dale Hollow Reservoir:

For purpose of size and creel restrictions on smallmouth bass, extends upstream on the Wolf River arm to the South Ford Road Bridge near Sulphur Springs.
- K. Handicapped – any person who is mentally impaired or physically impaired (including blindness) because of injury or disease, congenital or acquired, which permanently renders him/her so severely disabled as to be unable to move without aid of crutches or a wheelchair, or a person who has 80% permanent impairment of a hand or arm as determined by a physician using the standards outlined in the “Guide to Evaluations of Permanent Rating”, published by the AMA or other acceptable rating system.
- L. Bait – any living or dead organism, or prepared substance designed to attract fish by taste or odor. For the purpose of this proclamation, bait includes, but is not limited to, fish, fish eggs, crayfish, worms, grubs, crickets, corn, cheese, bread, pork rinds, putty or paste-type products, and flavors or scents applied to or impregnated into artificial lures.

SECTION XVI. SHOOTING FISH AND TURTLES

Shooting fish and turtles with firearms is prohibited.

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SECTION XVII. SALE OF FISH AND TURTLES

It is illegal to sell or offer for sale fish and turtles taken under authority of this proclamation.

SECTION XVIII. REPEAL OF PRIOR PROCLAMATIONS

This proclamation repeals Proclamation 05-26, dated October 28, 2005.

Proclamation 06-23 received and recorded this 30th day of October, 2006 to become effective March 1, 2007. (10-17-06)



CERTIFICATE OF APPROVAL

As provided by T.C.A., Title 4, Chapter 5, I hereby certify that to the best of my knowledge, this issue of the Tennessee Administrative Register contains all documents required to be published that were filed with the Department of State in the period beginning October 2, 2006 and ending October 31, 2006.

A handwritten signature in black ink that reads 'Riley C. Darnell'.

RILEY C. DARNELL
Secretary of State